

No. 13031

United States
Court of Appeals
for the Ninth Circuit.

SAM ZALL, an Individual Doing Business as Sam
Zall Milling Company,

Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
and

Respondent,

NATIONAL LABOR RELATIONS BOARD,
vs.

Petitioner,

SAM ZALL, an Individual Doing Business as Sam
Zall Milling Co.,

Respondent.

Transcript of Record

Upon Petition to Review and Petition for Enforcement
of Order of the National Labor Relations Board

FILED

APR 28 1952

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif.

PAUL P. O'BRIEN
CLERK

No. 13031

United States
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for the Ninth Circuit.

SAM ZALL, an Individual Doing Business as Sam
Zall Milling Company, Petitioner,
vs.

NATIONAL LABOR RELATIONS BOARD, Respondent,
and

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vs.

SAM ZALL, an Individual Doing Business as Sam
Zall Milling Co., Respondent.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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APPEARANCES

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BENJAMIN B. LAW,

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San Francisco, Calif.,

For the General Counsel.

United States of America Before the National Labor
Relations Board, Twentieth Region

Case No. 20-CA-503

In the Matter of

SAM ZALL, an Individual Doing Business as SAM
ZALL MILLING COMPANY,

and

AMERICAN FEDERATION OF GRAIN MILL-
ERS INTERNATIONAL UNION, A.F.L.

COMPLAINT

It having been charged by American Federation of Grain Millers International Union, A.F.L., that Sam Zall, an individual, doing business as Sam Zall Milling Company, has engaged in, and is now engaging in, certain unfair labor practices affecting commerce as set forth in the National Labor Relations Act, as amended, 29 U.S.C.A. 141, et seq. (Supp. July, 1947), herein called the Act, the General Counsel of the National Labor Relations Board, on behalf of the Board, by the Regional Director for the Twentieth Region, designated by the Rules and Regulations of the National Labor Relations Board, Series 5, as amended, Section 203.15, hereby issues this Complaint and alleges:

I.

Sam Zall, an individual, doing business as Sam Zall Milling Company, hereinafter called the Re-

spondent, is engaged at Marysville, California, in the production and sale of animal and poultry feeds. During 1949 the Respondent purchased grains, alfalfa, concentrates and other materials valued at more than \$250,000, of which, materials valued at more than \$90,000 were shipped directly to the Respondent's place of business in Marysville, California.

During 1949 the Respondent sold in California, poultry feeds valued at more than \$75,000 to Vantress Hatchery and Breeding Farms, a business enterprise, which used said feeds in the production of poultry and eggs at its farms near Marysville, California. During 1949 Vantress Hatchery and Breeding Farms sold and shipped from its farms near Marysville to points in the United States outside California, eggs and poultry valued at more than \$60,000.

During 1949 the Respondent sold, in California, animal and poultry feeds to livestock and poultry producers who collectively sell substantial amounts of livestock and poultry or livestock and poultry products to points in the United States outside California.

II.

American Federation of Grain Millers International Union, A.F.L., herein called the Union, is a labor organization within the meaning of Section 2 (5) of the Act.

III.

All of the Respondent's production and maintenance employees, including the truck driver, but

excluding supervisors, buyers, salesmen and office employees, constitute an appropriate unit for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

IV.

By October 2, 1950, a majority of the employees in the appropriate unit set forth in paragraph III, above, had designated the Union as their representative for the purposes of collective bargaining with the Respondent, and at all times since October 2, 1950, the Union has been the representative for the purposes of collective bargaining of the majority of the employees in said unit and by virtue of Section 9 (a) of the Act, has been, and is now, the exclusive representative of all the employees in said unit for the purposes of collective bargaining in regard to rates of pay, wages, hours of employment, and other conditions of employment.

V.

On October 3, 1950, and at all times thereafter up to and including the date hereof, the Respondent failed and refused, and continues to fail and refuse, to bargain collectively with the Union as the exclusive representative of all the employees in the appropriate unit above described in respect to rates of pay, wages, hours of employment, and other conditions of employment.

VI.

(a) On or about October 3, 1950, the Respond-

ent interrogated his employees about their union sympathies and activities.

(b) On or about October 6, 1950, the Respondent induced his employees within the appropriate unit described above to personally sign an agreement with him covering wages and working conditions.

(c) Within a few days after October 6, 1950, the Respondent granted to his employees pay increases and improved conditions of employment.

(d) The Respondent engaged in the acts and conduct set forth in sections (a), (b) and (c) of this paragraph, for the purpose of discouraging their continued membership in and activity on behalf of the Union.

VII.

By his acts set forth in paragraphs V and VI, sections (b) and (c), above, the Respondent did engage in and is now engaging in, unfair labor practices within the meaning of Section 8 (a) (5) of the Act.

VIII.

By his acts set forth in paragraphs V and VI, sections (a), (b) and (c), above, the Respondent did interfere with, restrain and coerce, and is interfering with, restraining and coercing, his employees in the exercise of their rights guaranteed them by Section 7 of the Act, and did thereby engage in and is thereby engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

IX.

The acts of the Respondent, set forth in paragraphs V and VI, sections (a), (b) and (c), above, occurring in connection with the operations of the Respondent described in paragraph I, above, have a close, intimate and substantial relation to trade, traffic and commerce among the several states of the United States and tend to lead to labor disputes burdening and obstructing commerce and the full flow of commerce.

X.

The aforesaid acts of the Respondent, set forth in paragraphs V and VI, sections (a), (b) and (c), above, and each of them, constitute unfair labor practices within the meaning of Section 8 (a) (1) and (5) and Section 2 (6) and (7) of the Act.

Wherefore, the General Counsel of the National Labor Relations Board, on behalf of the Board, on this 5th day of January, 1951, issues this, his Complaint against the Respondent herein.

[Seal] /s/ GERALD A. BROWN,
Regional Director, National Labor Relations Board,
Twentieth Region.

[Admitted in evidence as General Counsel's Exhibit No. 1-E.]

Admitted January 30, 1951.

Before the National Labor Relations Board

[Title of Cause.]

ANSWER OF SAM ZALL

Comes now Sam Zall and answering the complaint on file herein, admits, denies, alleges and avers as follows, to wit:

1. Lacks information on the subject sufficient to enable him to answer that portion of Paragraph I thereof, commencing with the words, "During 1949 Vantress Hatchery" and ending with the words, "outside California." and basing his denial on that ground denies each and every, all and singular, generally and specifically, the allegations therein.
2. Lacks information or belief upon the subject sufficient to enable him to answer the allegations contained in paragraphs II, III and IV of said complaint and basing his denial on that ground, denies each and every, all and singular, generally and specifically, the allegations therein contained.
3. Denies paragraph V, sub-paragraphs (a) and (b) and (d) of paragraph VI, paragraph VII, paragraph VIII, paragraph IX and paragraph X of said complaint and each and every, all and singular, generally and specifically, the allegations therein referred to.
4. Admits that within a few days after October 6, 1950, he granted to his employees pay increases but denies that he granted them improved conditions of employment.

Wherefore, it is prayed that the complaint on file herein be dismissed and that he go hence without more.

RICH, CARLIN & FUIDGE,
Attorneys for Respondent,
Sam Zall.

State of California,
County of Yuba—ss.

Sam Zall, being first duly sworn, deposes and says:

That he is the Respondent in the above-entitled action; that he has read the within and foregoing Answer and knows the contents thereof and that the same is true of his own knowledge except as to matters therein stated on his information or belief and as to those matters he believes it to be true.

/s/ SAM ZALL.

Subscribed and sworn to before me this 11th day of January, 1951.

/s/ EDITH FRANCISCOVICH,
Notary Public in and for the County of Yuba, State
of California.

Received January 16, 1951.

[Admitted in evidence as General Counsel's Exhibit No. 1-I.]

Before the National Labor Relations Board

[Title of Cause.]

Before: Maurice M. Miller,
Trial Examiner.

APPEARANCES

BENJAMIN B. LAW,
For the General Counsel.

RICH, CARLIN & FUIDGE, by
RICHARD H. FUIDGE,
For the Respondent.

CECIL F. GAMBLE,
For the Union.

INTERMEDIATE REPORT AND RECOMMENDED ORDER

Statement of the Case

Upon a charge and amended charge duly filed by the American Federation of Grain Millers and International Union, affiliated with the American Federation of Labor and designated herein as the Union, the General Counsel of the National Labor Relations Board¹ in the name of the Board, caused the Regional Director of its Twentieth Region, at San

¹The General Counsel and his representative in this case are designated herein as the General Counsel, and the National Labor Relations Board as the Board.

Francisco, California, to issue a complaint dated January 5, 1951, against Sam Zall, an individual doing business in Marysville, California, as the Sam Zall Milling Co., herein called the Respondent. The complaint alleged that the Respondent engaged and has continued to engage in unfair labor practices affecting commerce, within the meaning of Section 8 (a) (1) and (5) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, as amended and re-enacted in the Labor Management Relations Act of 1947, 61 Stat. 136, designated herein as the Act. Copies of each charge, the complaint, and a notice of hearing were duly served upon the Respondent and the Union.

With respect to the unfair labor practices, the complaint alleged, in substance: (1) that all of the Respondent's production and maintenance employees, including the truck driver, but exclusive of supervisors, buyers, salesmen and office employees, constitute a unit appropriate for the purposes of collective bargaining; (2) that a majority of the employees in the unit above defined had, by October 2, 1950, designated the Union as their representative for the purposes of a collective bargain with the Respondent, and that the Union, at all times since October 2, 1950—by virtue of Section 9 (a) of the Act—has been, and is now, entitled to act as the exclusive representative of the employees in the unit for the purpose of collective bargaining in regard to their rates of pay, wages, hours of employment, and other conditions of work; (3) that

the Respondent, on and after October 3, 1950, failed and refused, and continues to fail and refuse, to bargain collectively with the Union as the exclusive representative of the employees in the unit, with respect to their rates of pay, wages, hours of work and other conditions of employment; and (4) that the Respondent, (a) on or about October 3, 1950, interrogated his employees about their union sympathies and activities, (b) on or about October 6, 1950, induced employees within the unit to sign—personally—an agreement with him covering their wages and conditions of work, and (c) within a few days thereafter, granted them pay increases and improved conditions of work—all to discourage their continued membership in the Union and activity in its behalf.

In due course, on January 15, 1951, the Respondent filed an answer, in which he admitted certain jurisdictional allegations of the complaint, but denied others with respect to the interstate activity of his customers. The Respondent also challenged the complaint's allegation with respect to the status of the Union as a labor organization, and denied the commission of any unfair labor practice.

Pursuant to notice, a hearing was held at Marysville, California, on January 30, 1951, before me, a Trial Examiner duly designated by the Chief Trial Examiner. The General Counsel and the Respondent were represented by counsel, and the Union by a business representative. All of the parties participated in the case, and were afforded a full opportunity to be heard, to examine and cross-ex-

amine witnesses, and to introduce evidence pertinent to the issues. At the outset of his presentation, the General Counsel moved to amend the complaint in order to clarify one of its jurisdictional allegations. There was no objection; the motion was granted. A motion to amend the Respondent's answer was also granted. Certain stipulations with respect to the business activities of the Respondent and its principal customer were then noted for the record. At the close of the testimony, a motion on behalf of the General Counsel to conform the pleadings to the proof in certain immaterial matters was granted, without objection. Thereafter, counsel and the Trial Examiner engaged, informally, in a discussion of the issues in lieu of oral argument. The discussion has been made a part of the record. No one reserved the right to file a brief or proposed findings and conclusions, and no briefs have been received.

Findings of Fact

Upon the entire record in the case, and from my observation of the witnesses, I make the following findings of fact:

I. The Business of the Respondent

Sam Zall, designated in this report as the Respondent, is an individual doing business as the Sam Zall Milling Co. at Marysville, California, where he is engaged in the production and sale of animal and poultry feeds. During 1949, he purchased grains, alfalfa, concentrates and other materials valued at more than \$250,000, of which materials valued at more than \$90,000 were shipped directly to his

place of business from points in the United States outside of the State of California. With respect to the materials shipped directly to the Respondent from points outside of California, it was stipulated that all of the material thus purchased was secured through brokers within the State of California under contracts with such brokers, and that payment for the material thus purchased was made to the brokers within the State.

In 1949, also, the Respondent sold, in California, poultry feeds valued at more than \$75,000 to the Vantress Hatchery and Breeding Farms, a business enterprise, which used these feeds in the production of poultry and eggs at its farm near Marysville. During 1949, the Vantress Hatchery and Breeding Farms sold and shipped to points in the United States outside of California, eggs and poultry valued at more than \$60,000. The record establishes, by stipulation, that I. K. Vantress, a member of the Vantress enterprise, would testify, if called, that feed purchased from the Respondent is fed only to its breeding stock, not to baby chicks; that the breeding stock is not shipped out of the State; and that its out-of-state shipments consist principally of hatching eggs. Shipments of chicks are rare and represent a "very minor percentage" of total shipments.

The total annual sales of the Respondent approximate \$500,000 in value; all of his sales are made in California, to purchasers within the State. The Vantress enterprise is his largest single customer. It was stipulated, and I find, that the figures with re-

spect to the business activities of the Respondent and Vantress Hatchery and Breeding Farms in 1950, if given, would be approximately the same as those for the previous year, noted.

The Respondent contends that his business relationships with the Vantress enterprise are insufficient to subject him to the Board's jurisdiction, on the ground that his own business activities are primarily local in character and do not involve the production of a commodity which, itself, moves in commerce, either in pure or processed form. At the most, it is argued, use of the Respondent's feed at the Vantress Farms may increase the productivity of its breeding stock, and thus make possible increased interstate shipments of the hatchery eggs which they in turn produce—but would produce, in some degree, even without the Respondent's feed.

I find no merit in the contention that the activities of the Respondent are not subject to the Board's jurisdiction. It is well established, now, that the jurisdiction conferred upon the Board by statute is co-extensive with the constitutional authority of Congress to legislate with respect to matters affecting interstate and foreign commerce. In determining the limits of this authority, the Supreme Court has declared that "the effect upon interstate and foreign commerce, not the source of the injury" determines the Board's jurisdiction.² In the present case, applying this test, I find no difficulty in reaching the conclusion that the Respondent is engaged in the manufacture of a product closely con-

²Consolidated Edison Co. v. NLRB, 305 U. S. 197, 222.

nected with, and necessary to, the production of goods for commerce, and that unfair labor practices on the part of the Respondent might very well lead to labor disputes which would burden and obstruct commerce.

It has been judicially determined that employees who prepare fertilizer, or supply electricity and irrigation water, used in the production of agricultural commodities which move in commerce, perform operations necessary to the production of such goods for commerce. And the fact that, in this case, the Respondent's feed sustains and promotes the productivity of poultry stock which does not, itself, move in commerce but merely produces eggs which are the subject of interstate shipment, creates a situation clearly, but not materially, different. No substantial distinction, in my opinion, can be drawn between operations necessary to the production of finished goods for commerce and operations necessary to the production or maintenance of a "source" of goods for interstate shipment.³ As the Supreme Court, in a case involving the Fair Labor Standards Act,⁴ has declared:

³Cf. *McComb v. Super-A Fertilizer Works, Inc.*, 165 F. 2d 824, in which an analogous question under the Fair Labor Standards Act, involving a manufacturer of chemical fertilizers, was decided. The Court held the statute applicable to the employees of the fertilizer manufacturer engaged in mixing the fertilizer, bagging it, and delivering it to trucks for transportation to farms, on the ground that their activity was "necessary to the production" of goods for commerce.

⁴*Roland Electrical Co. v. Walling*, 326 U. S. 657, 663.

[the Act] does not require the employee to be employed even in the production of an article which itself becomes the subject of commerce or transportation among the several States. It is enough that the employee be employed, for example, in an occupation which is necessary to the production of a part of any other "articles or subjects of commerce of any character" which are produced for trade, commerce or transportation among the several States. This does not require an employee to be employed exclusively in the specified occupation. This does not require that the occupation in which he is employed be indispensable to the production under consideration. It is enough that his occupation be "necessary to the production." There may be alternative occupations that could be substituted for it but it is enough that the one at issue is needed in such production and would, if omitted, handicap the production.

The fact that the Vantress enterprise, as a hatchery and breeding farm, may not be subject to the Fair Labor Standards Act in its own right, also, is not material. There is nothing in the National Labor Relations Act, as amended, or its legislative history to suggest that Congress intended to exempt from the Board's jurisdiction employers engaged in industrial activity necessary to the production of agricultural commodities which move in commerce.

I find that the Respondent is engaged in com-

merce and business activities which affect commerce, within the meaning of the Act. In conformity with the Board's recently articulated policy in regard to the assertion of its jurisdiction over local enterprises that furnish services or material necessary to the operation of other enterprises engaged in the production of goods destined for out-of-state shipment,⁵ I find that its assertion of jurisdiction in this case would effectuate the policies of the statute.

II. The Labor Organization Involved

The American Federation of Grain Millers International Union, affiliated with the American Federation of Labor, is a labor organization, within the meaning of the Act, which admits employees of the Respondent to membership.

III. The Unfair Labor Practices

A. The refusal to bargain

1. The appropriate unit

The Respondent is associated with two business enterprises in Marysville. One, a corporation known as the Farmers Public Warehouse and the High and Dry Warehouse, Inc., operates a public warehouse for the storage of grain and other materials. Adjacent thereto, in a separate building, the Respondent prepares animal and poultry feeds, doing business as the Sam Zall Milling Company. Although some of the ingredients used in the manufacture of

⁵Hollow Tree Lumber Company, 91 NLRB No. 113.

his finished product are stored in the public warehouse and are handled by warehouse employees, the present case is concerned only with the persons employed by the Respondent in his milling enterprise.

His employees as a sole proprietor, in September and October of 1950, consisted of an office clerk, an outside salesman, one supervisor designated as in charge of production and sales, six men employed in the plant and a truck driver. Although each of the men employed in the plant was qualified to perform every function involved in its operation, they did have definite duties. One, I find, worked primarily as a feed mixer, another as a grinder man, a third as a take-off man, the fourth as a sack sewer. Two employees worked in the plant part of the time and drove a truck for the Respondent upon occasion as required.⁶ In September and October of 1950, the Respondent's full-time truck driver delivered feed to the Respondent's customers; occasionally, he was required to bring to the mill materials required in the production of the feed. All of the men were paid at an hourly rate; there were differentials, but the spread between the lowest and the highest rate paid by the Respondent did not exceed ten cents per hour. These differentials, apparently, were based primarily on differences in the work performed and the factor of seniority.

The General Counsel alleges that the unit appro-

⁶Upon occasion, the Respondent employed extra workers on a part-time or temporary basis, also.

priate for collective bargaining, in September and October of 1950, at the Respondent's plant, included all of his production and maintenance employees and the truck driver but excluded his office employee, the outside salesman, and Mr. Cotton—the supervisor previously mentioned. The Respondent, in his answer, denied the appropriateness of the unit thus defined; at the hearing, however, he objected only to the inclusion in the unit of the full-time truck driver and the part-time drivers, insofar as their assignments might involve driving work. The objection, as advanced, appears to be grounded in the Respondent's opinion that persons assigned to work as drivers ought to be represented, if at all, by another Union.

I find no merit in the Respondent's objection. The fact that persons employed as truck drivers on a full-time or part-time basis might be appropriately represented by a labor organization other than the Union involved in this case cannot, clearly, affect the appropriateness of the unit for which the Union seeks representative status. The Board has, in many cases, considered the relationship between truck drivers and other persons employed in a proposed production and maintenance unit. Its decisions with respect to their inclusion or exclusion from such units have been based upon a number of factors; the record in this case, however, is silent with respect to most of them. Whatever the present record shows or fails to show in this connection, however, it is clear in the light of previous decisions

that a production and maintenance unit which includes part-time and full-time truck drivers is not inherently inappropriate. Since all of the Respondent's employees are paid at an hourly rate, with relatively insignificant differentials, and since the only available evidence with respect to the desires of the full-time truck driver and one of the part-time drivers in regard to representation indicates, without contradiction, that they desired the Union to represent them. I conclude that the Respondent's full-time and part-time truck drivers may properly join the production and maintenance workers in his employ in a single unit, appropriate for the purposes of a collective bargain.

Upon the record, therefore, I find that all of the Respondent's production and maintenance employees including the truck driver, but exclusive of his office employees, salesmen, and supervisors as defined in the Act, constituted, and now constitute a unit appropriate for the purposes of collective bargaining with the Respondent within the meaning of Section 9 (b) of the Act.

2. The Union's majority

In October of 1950, at the time of the events with which this case is concerned, the Respondent's employees, within the unit herein found appropriate were seven in number. On September 12, 1950, one of them, Jess Stovall, at the solicitation of Cecil F. Gamble and John Hanifin, Union organizers, signed a card designated as an "Authorization and Application for Membership"; by its terms Stovall ap-

plied for membership in the Union and authorized it or a local affiliated with it, and its officers or representatives, to represent him in collective bargaining with the Respondent in regard to his hours of labor, wages, tenure of employment, and the other terms and conditions of his employment. Thereafter, on October 2, 1950, similar cards were signed by four other employees of the Respondent; Charles H. Adams, Earnest C. Curt, Otis A. Matthews, and R. C. Skinner. Gamble testified, without contradiction, that similar cards were subsequently executed by Gilbert Medina, a worker then employed as a combination truck driver and mill worker, and E. L. Howard, the Respondent's full-time truck driver. Since only five of the authorization cards executed have been submitted for the record, however—no cards having been offered for Medina and Howard—I have assumed in connection with the issue now under consideration, that the Union's claim to represent a majority of the employees is grounded upon the authorization cards executed by five of the seven employees in the unit herein found to be appropriate.

The Respondent contends that the authorization cards, received in evidence, may not be regarded as proof of the Union's representative status because the employees did not intend, in signing them, to apply for Union membership or to designate the Union as their collective bargaining representative, but intended merely—in the light of representations made by Gamble and Hanifin—to make possible a

petition for certification on the part of the Union, looking toward an election, under Board auspices, to establish its representative status. Although two of the employees did testify that they understood only that their signatures would permit the Union to file such a petition and bring about an election, I find no merit in the Respondent's contention. Gamble's testimony, which I credit, establishes that each of the employees was informed of the heading on the card he signed; that heading, previously noted, clearly established the character of the card as an application for membership and an authorization card. The employees, I find, were not misled, therefore, despite Gamble's admitted indication to them at the time, that he expected, in the normal course of events, to establish the Union's right to recognition through a Board election. In any event, absent proof that the employees were induced to sign the authorization cards by some unlawful means, it may be taken as datum that an employee's thoughts—or after-thoughts—as to why he signed a Union card, and what he thought that card meant, cannot negative the overt action involved in the execution of a card designating a Union as his bargaining agent.⁷ I find that on October 2, 1950, the Union was, and at all times since has been, the duly designated representative of a majority of the Respondent's employees in the unit described above as appropriate for the purposes of a

⁷Joy Silk Mills v. NLRB, 27 LRRM 2012, 2020 and the cases therein cited.

collective bargain. Pursuant to Section 9 (a) of the Act, it has been at all material times, and is now, entitled to act as the exclusive representative of all the employees in the aforesaid unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, hours of work and other conditions of employment.

3. The refusal

On or about September 26, 1950, having secured an authorization card from Stovall, Gamble and Hanifin called upon the Respondent at the plant. Zall was advised that the Union planned to organize his employees. The testimony with respect to the conversation that ensued is not in conflict on material matters. Gamble's detailed version of it, which I credit, reads as follows:

He said that his plant was like a big family and that whenever he had any trouble in the plant why he went out and adjusted them and he said that he was a man of a few words and he laid his cards on the table and says, "I don't want a union here and my people do not need a union." And I stated to him that I could appreciate his position, now not knowing too much about the principles and policies of the organization, but after we had got better acquainted, why he would be more satisfied. And he says, "I have stated my position, we do not need a Union in this plant."

In the course of the conversation Gamble supplied the Respondent with a blank "Master Agreement"

utilized by the Union as a basis for negotiations. Zall stated that he would study it; in response to a request for an appointment he said that he would read it, study it, and make an appointment with Gamble to discuss it, if he (Zall) liked it, when Gamble returned in a week or so. The Union representatives then left.

On October 3, 1950, after having secured designation cards from a majority of the Respondent's employees, Gamble and Hanifin returned to the plant; they met the Respondent outside the plant office and held a conversation with him on the sidewalk before the front entrance. Gamble's testimony, which I credit, with respect to this conversation reads as follows:

I asked Mr. Zall if he had read and studied the contract; he said "Yes," he had; I asked him what he thought of it and he said he thought it was a very good contract but that was one man's opinion. I asked him if he would consent to a joint election which was customary between unions and employers for the purpose of recognition of the union as his employees' representative. He stated that he had already previously stated his position that he did not want a Union in the plant. I asked him if he would consent to an election if we had over thirty per cent * * * thirty per cent of the membership signed up. Signed up means the authorization cards. He says, "Have you got them?" I said, "Yes." He said, "Let me see them." I said, "Oh, no." I said, "That is

for the Board, and if the Board decides to let you see the authorization cards, that will be another matter." He stated again that he had previously made himself known on this matter and at that time we should [leave] and he went into the plant and we left the premises.

Gamble also testified, credibly, that Zall, in the course of the conversation, had invited him to go ahead and petition for an election, but stated that his good relations with the Union would cease when it had its election. The Union, in fact, did file a petition for an election on October 4, 1950; the petition was withdrawn, however, on the 16th of the month.

In the meantime, on October 3, 1950, the Respondent, I find, questioned a number of his employees as to whether they had signed Union authorization cards. Three of the employees, at least, replied affirmatively; one of these, I find, also informed the Respondent that he had seen the others execute authorization cards.

Thereafter, at various times, Cotton sought to determine, in conversation, the desires of the men with respect to a modification of their rates of pay, wages, hours, and conditions of work. As a result of these conversations, on or about October 5, 1950, he drew up a document intended to embody the various employee suggestions, and discussed it with the men, informally, before work began. The consensus of opinion among the employees, apparently, was that Cotton's draft adequately expressed

their desires. On the 6th, Cotton took the draft to the Respondent. The latter, I find, came out of his office, read the draft to the men, and asked them, at an informal conference, whether its provisions were satisfactory. He received an affirmative reply. The draft was then reduced to typewritten form; it was signed by Zall in his office, and was presented thereafter to the plant employees, in their turn, for signature. Stovall, Curt, Skinner, Adams and Matthews signed the document.

Designated as a "contract," the document provided that the Respondent would pay the "same wages" as General Mills Corporation paid at its Marysville feed manufacturing plant, but that the grinder man would receive ten cents per hour in excess of the General Mills scale and the mixer man would receive five cents per hour in addition. The Respondent agreed that employees who had worked 40 hours in a given work week would not be "cut off" thereafter, if their 40th hour of work occurred before the end of the regular work week; he also agreed that, as far as possible, all available work would be assigned to the regular employees, even though overtime might be involved. Each of these commitments, as the record shows, involved a departure from past practice.⁸ The record establishes that the agreement, in fact, called for a wage increase in order to enable the Respondent to reach

⁸With respect to the second commitment, the record establishes that the Respondent had, in the past, met emergency situations which required extra work by the employment of part-time workers.

the "General Mills" scale. The exact date on which the increase became effective is not clearly established; the agreement, however, was intended, by its terms, to be effective from October 2, 1950, to October 2, 1951, with an "option of renewal" at that time.

Conclusions

Under the Act, an employer is obligated to recognize any union which represents a majority of his employees, in a unit appropriate for collective bargaining, as the exclusive representative of such employees. In decisions too numerous to require or warrant citation, the Board has held that an employer's failure to grant exclusive recognition to the Union designated by a majority of his employees in an appropriate unit constitutes a refusal to bargain. And whatever type of conduct may be characterized, generally, as a refusal to recognize a union, it is clear—in this case—and I find, that the Respondent was guilty of such a refusal when he told the Union's organizer that he did not wish to negotiate a union contract, and thereafter, when he negotiated with the employees directly in regard to their wages, rates of pay, hours, and other terms and conditions of employment, and presented for their signature a document which embodied the substance of the matters agreed upon in such negotiations.⁹ An employer cannot, as the Respondent did,

⁹Medo Photo Supply Corporation v. NLRB, 321 U. S. 678; J. I. Case Company v. NLRB, 312 U. S. 332; National Licorice Company v. NLRB, 309 U. S. 350.

refuse to recognize the Union designated by a majority of his employees merely because he has been able to adjust grievances satisfactorily by unilateral action in the past.¹⁰ I so find.

Ordinarily, it is true, an employer is not required to recognize and bargain with a Union until he receives a request for such recognition or the initiation of negotiations from the labor organization.¹¹ And the record, in its present form, does give rise to some doubt with respect to the Union's compliance with this requirement. It did not, in conformity with its usual practice, dispatch a letter to the employer advising him of its status as a majority representative and requesting a conference for the purpose of initiating negotiations. Nevertheless, despite the absence of evidence sufficient to establish that a formal request was made, the Respondent was, I find, effectively put upon notice with respect to the Union's desire to negotiate as the representative of his employees. When Gamble and Hanifin met Zall for the second time, they asked his opinion of the contract they had previously left with him. Zall construed their inquiry as a request to negotiate; he so testified. A request to bargain need not be presented in *haec verba* so long as there is one by clear implication.¹² I find that the Re-

¹⁰Atlantic Refining Company, 1 NLRB 359; Ford Motor Company, 29 NLRB 873.

¹¹NLRB v. Columbian Enameling and Stamping Company, 306 U. S. 292.

¹²Joy Silk Mills v. NLRB, 27 LRRM 2012, 2018.

spondent, on October 3, 1950, was requested to bargain.

The Union, it is true, never advised the Respondent that it did, in fact, represent a majority of his employees; Gamble made no claims in that regard when he presented his "request" that negotiations begin, and when that suggestion was rebuffed by the Respondent, he only claimed to represent a sufficient number to raise a question of representation. While the organizer's failure to claim, expressly, that the Union represented a majority, may have been somewhat inept, the absence of such a claim, in a formal sense, cannot be regarded as fatal to the General Counsel's case. Zall had made it perfectly clear, at each of his meetings with the Union organizer, that he did not wish to negotiate with the Union, and that he did not believe his employees needed union representation. Under the circumstances, Gamble was justified, I find, in the assumption that it would be futile to advance a claim with respect to the Union's representative status, or to offer proof of it in the form of authorization cards. The diversion of the conversation to the subject of a consent election and Board representation case procedure, in short, developed logically from Zall's expressed reluctance to deal with the Union; his attitude, I find, excused the Union's failure to claim status as a majority representative, or to offer proof in that connection.

Reference has already been made to Zall's express refusal to recognize or negotiate with the Union as a violation of the statute. In the present

state of the law, citation of authority is unnecessary to establish that his express refusal to negotiate with it was compounded by his subsequent action in negotiating directly with the employees. Despite the absence of evidence sufficient to establish that Zall was, in fact, aware of the Union's majority status when he negotiated and executed the agreement previously noted with his employees directly, there can be no doubt, upon the record, that the agreement in question, as negotiated and executed, was reasonably calculated to forestall and effectively to frustrate anticipated Union action.¹³ Even if it be assumed, for the purpose of argument and in conformity with the Respondent's contention, that the grievances disposed of by the contract had been a subject of discussion at the plant before the Union organizers appeared, and before the Respondent became aware of the Union's organizational activity, it seems clear, and I find, that the adjustment of such grievances in a written instrument was precipitated by the Union's bid for recognition. Upon the entire record, therefore, I find that the Respondent, by the negotiation and execution of the agreement in question, in addition to his earlier statements with respect to his unwillingness to deal with the Union, refused to bargain with it in violation of the statute.

¹³Curt testified explicitly, without contradiction—and I find—that Zall's comment after the agreement was signed was, in substance, "Now boys, when the election comes, you know how I would like to have you vote." The men did not reply.

B. Interference, restraint and coercion

The record, with respect to the Respondent's interrogation of his employees in regard to their Union affiliation and his course of conduct in connection with the negotiation and execution of the agreement which they were ultimately induced to sign, has been detailed, adequately, elsewhere in this report. The Respondent's contention that his interrogation of the employees was prompted solely by a natural desire to ascertain the facts with respect to the Union's asserted interest—while understandable—cannot, in the light of accepted Board decisional doctrine, excuse his action. Upon the entire record, I find that the interrogation in question, and the Respondent's course of conduct with respect to the negotiation and execution of the agreement, interfered with, restrained, and coerced his employees in the exercise of rights guaranteed by the Act.

IV. The effect of the unfair labor practices upon commerce

The activities of the Respondent, set forth in Section III above, which occurred in connection with the operations of the Respondent described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several states, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The remedy

Since it has been found that the Respondent engaged and is now engaged in unfair labor practices, it will be recommended that he cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

It has been found, specifically, that the Respondent refused to bargain collectively with the Union as the exclusive representative of his employees in a unit appropriate for the purposes of a collective bargain. Accordingly, it will be recommended that the Respondent, upon request, bargain with the Union as such representative, and if an understanding is reached, embody such understanding in a signed agreement.

It has been found, also, that the Respondent negotiated and executed a contract with his employees, directly, immediately after being apprised of the Union's bid for recognition, which was reasonably calculated to forestall and frustrate anticipated Union action before the Board in a representation case. In this connection, it will be recommended that the Respondent cease giving effect to the contract in question, or any modification, continuation, extension, or renewal of it, to forestall collective bargaining or deter self-organization.¹⁴ Nothing in this recommendation, however, should be construed by the Respondent to vary or abandon those wage, hour, seniority, or other substantive features of

¹⁴Port Gibson Veneer and Box Company, 70 NLRB 319; Cf. C. Pappas Company, Inc., 82 NLRB 765, 796.

the relationship between him and his employees, established in the performance of the agreement in question, or to prejudice the assertion by the employees of any rights they may have under that agreement.

Conclusions of Law

In the light of these findings of fact and upon the entire record in the case, I make the following conclusions of law:

1. The Respondent, Sam Zall, an individual doing business as Sam Zall Milling Co., is engaged in trade, traffic, and commerce, and business activities which affect commerce, within the meaning of Section 2 (6) and (7) of the Act.
2. The American Federation of Grain Millers International Union, affiliated with the American Federation of Labor, is a labor organization within the meaning of Section 2 (5) of the Act.
3. All of the Respondent's production and maintenance employees, including the truck driver, but exclusive of supervisors as defined in the Act, buyers, salesmen and office employees, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.
4. The Union was on October 2, 1950, and at all times since has been, entitled to act as the exclusive representative of the employees in the aforesaid unit, for the purposes of collective bargaining, within the meaning of Section 9 (a) of the Act.
5. By his refusal, on October 3, 1950, and at all times thereafter, to bargain collectively with the Union as the exclusive representative of his

employees in a unit appropriate for collective bargaining, the Respondent engaged and has continued to engage in unfair labor practices within the meaning of Section 8 (a) (5) of the Act.

6. By his interrogation of the employees with respect to their Union affiliation, and by his course of conduct in connection with the negotiation and execution of an agreement with his employees, directly, the Respondent interfered with, restrained, and coerced his employees, and has continued to interfere with, restrain, and coerce them; thereby he did engage and has continued to engage in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

Recommendations

Upon these findings of fact and conclusions of law, I recommend that the Respondent, Sam Zall, doing business as Sam Zall Milling Co., and his agents, successors, and assigns should:

1. Cease and desist from:

(a) Refusing to bargain collectively with the American Federation of Grain Millers International Union, affiliated with the American Federation of Labor, as the exclusive representative of all his production and maintenance employees, including the truck driver, but exclusive of supervisors as defined in the Act, buyers, salesmen and office employees;

(b) Giving effect to the agreement described in this Intermediate Report and Recommended Order, or any modification, continuation, extension, or renewal of it, to forestall collective bargaining or deter self-organization;

(c) In any other manner interfering with, restraining, or coercing his employees in the exercise of their right to self-organization, to form labor organizations, to join or assist the American Federation of Grain Millers International Union, A. F. L., or any other labor organization, to bargain collectively through representatives of their own free choice, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any and all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the National Labor Relations Act.

2. Take the following affirmative action which I find will effectuate the policies of the Act:

(a) Upon request, bargain collectively with American Federation of Grain Millers International Union, A. F. L., as the exclusive representative of his employees in the aforesaid bargaining unit, with respect to their rates of pay, wages, hours of work, and other terms or conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement;

(b) Give a separate written notice to each of the employees who executed the agreement de-

scribed in the Intermediate Report and Recommended Order, or any modification, continuation, extension, or renewal thereof: (1) That he will not enforce or attempt to enforce the agreement in question to forestall collective bargaining or deter self-organization; (2) That employees will not be required or expected, by virtue of that agreement, to deal with the Respondent directly in respect to their rates of pay, wages, hours of work, or other terms and conditions of employment; (3) That such discontinuance of the contract is without prejudice to the assertion of any legal rights employees may have required under it, or to the assertion of any defenses thereto acquired by the employer;

(c) Post at his establishment in Marysville, California, copies of the notice attached to this report. Copies of the notice to be furnished by the Regional Director of the Twentieth Region, as the agent of the Board, should be posted by the Respondent immediately upon their receipt, after being duly signed by him or a person qualified to act as his representative, and should be maintained by him for sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps should be taken by the Respondent to insure that these notices are not altered, defaced, or covered by any other material.

(d) File with the Regional Director of the Twentieth Region, as the agent of the Board, within twenty (20) days from the date of service of this Intermediate Report and Recommended Order, a

report in writing setting forth in detail the manner and form in which he has complied with these recommendations.

All parties are advised that upon the filing of this Intermediate Report and Recommended Order and the service of copies upon the parties—as provided in Section 203.45 of the Rules and Regulations of the National Labor Relations Board, Series 5, as amended, effective August 18, 1948—the Board will enter an order transferring the case to itself and will serve a copy of the order upon each of the parties, setting forth the date of the transfer.

Recommended Order

If, within twenty (20) days after the date of service of this Intermediate Report and Recommended Order, the Respondent satisfies the Regional Director, as the agent of the Board, that it has complied, or will comply with the foregoing recommendations, it is recommended that the National Labor Relations Board issue an order or take other appropriate action to close the case on compliance. Unless the Respondent satisfies the Regional Director, within twenty (20) days after the date of service of this Intermediate Report and Recommended Order, that it has complied or will comply with the foregoing recommendations, it is recommended that the National Labor Relations Board issue an order requiring the Respondent to take such action.

Dated this 6th day of March, 1951.

/s/ MAURICE M. MILLER,
Trial Examiner.

United States of America Before the
National Labor Relations Board

Case No. 20-CA-503

In the Matter of:

**SAM ZALL, an Individual Doing Business as SAM
ZALL MILLING CO.**

and

**A M E R I C A N F E D E R A T I O N O F G R A I N
M I L L E R S I N T E R N A T I O N A L U N I O N ,
A. F. L.**

DECISION AND ORDER

On March 6, 1951, Trial Examiner Maurice M. Miller issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices in violation of Section 8 (a) (1) and (5) of the Act, and recommending that he cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondent filed exceptions to the Intermediate Report and a supporting brief.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the

Trial Examiner with the following additions and modifications.¹

1. The Trial Examiner found, and we agree, that the Respondent interferred with, restrained, and coerced his employees in the exercise of the rights guaranteed in Section 7 of the Act, thereby violating Section 8(a)(1) of the Act, as amended, by interrogating his employees concerning their union affiliations,² by bargaining separately with his employees, and by granting them wage increases and more favorable conditions with regard to the assignment of overtime work, in an effort to induce them to forsake the Union.³

¹The Respondent has excepted to the Trial Examiner's finding that he is engaged in commerce and business activities which affect commerce, within the meaning of the Act. The jurisdictional facts, as fully set forth in the Intermediate Report, show that during the year 1949 the Respondent sold feeds valued in excess of \$75,000 to the Vantress Hatchery and Breeding Farms, an enterprise which shipped eggs and poultry valued in excess of \$60,000 to points outside the State of California during the same calendar period. On the basis of these facts we find that the Respondent is engaged in commerce, within the meaning of the Act, and that it will effectuate the policies of the Act to assert jurisdiction in this case. See Camp Concrete Rock Company, 94 NLRB No. 51, in addition to the cases cited by the Trial Examiner.

²Cf. Baxter Bros., 91 NLRB No. 233; Standard-Coosa-Thatcher Company, 85 NLRB 1358.

³Cf. Continental Nut Company, Inc., 91 NLRB No. 161; Tennessee Valley Broadcasting Company, 83 NLRB 895.

2. We agree with the Trial Examiner's finding that the Respondent has refused to bargain with the Union in violation of its obligations under Section 8 (a) (5) of the amended Act, for the following reasons:

The record is clear, as the Trial Examiner found, that the Union had secured authorization cards⁴ from a majority of the employees in the appropriate unit⁵ by October 3, 1950, the date of its second conference with the Respondent. As of that date the Respondent was obligated by law to recognize and bargain with the Union as the representative of his employees unless he entertained a good faith doubt as to the Union's majority status. Union Organizer Gamble's version of his conversation with the Respondent on October 3, 1950, indicates that the union agent did not state in so many words that the Union represented a majority of Respondent's employees and was formally requesting that the

⁴In agreement with the Trial Examiner, we find that the employees' reasons for signing cards cannot affect the validity of those cards insofar as they establish the Union's status as bargaining representative of the employees who signed the cards.

⁵Also in agreement with the Trial Examiner, we find that all production and maintenance employees at the Respondent's Marysville, California, plant, including the truck driver, but excluding office employees, salesmen, and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act. Respondent, in his exceptions, does not question the appropriateness of the unit.

Respondent bargain with it. But the Respondent was in no doubt, as his testimony reveals, that the Union was there to do business. And its business was the representation of his employees for the purposes of collective bargaining. "Words are not pebbles in alien juxtaposition."⁶

The Respondent testified that he interpreted the conversation to be what it obviously was, an attempt on the part of the Union to negotiate with him as the representative of his employees.⁷ Previously the Union had left with the Respondent a collective bargaining agreement of the type that it normally executed with employers on behalf of their employees. The Respondent had read the contract which, among other provisions, expressly required recognition of the Union as the sole collective bargaining agent for those units of employees in which it had secured majority standing. We find that the Union, on October 3, 1950, in effect, requested recognition by the Respondent as the majority bargaining

⁶L. Hand, C. J., in NLRB vs. Federbush, 121 F. 2d 954, 957 (C. A. 2).

⁷Our dissenting colleague interprets this testimony as being with reference to a consent election agreement. However, the Respondent testified as follows: "Mr. Gamble or Mr. Hanifin [Union agents] stated that they would like to negotiate, and I told them that I wasn't interested in negotiating, and then they said, I believe, that in that case we would have to have an election . . ."
(Emphasis added.)

representative of his employees.⁸ We do not believe that the Union's attempt to secure the Respondent's agreement to a consent election after he had made it clear that he was otherwise opposed to collective bargaining in his plant means that the Union was not also seeking immediate recognition to which, on October 3, 1950, it was lawfully entitled. At most, the Union's conduct in this respect may reasonably be interpreted as an alternative attempt to achieve recognition without resorting to charges of unfair labor practices.

Another question would be presented had the Respondent, without more, suggested that the Union claiming to represent his employees secure certification through the normal processes of the Board. But the Respondent was not satisfied so to conduct himself. On the very day of his conversation with the Union he sought out and unlawfully interrogated his employees as to whether they had signed union authorization cards. By such unlawful tactics he had reason to know on October 3, 1950, that the Union actually had been selected as the majority bargaining representative of his employees. He continued, nevertheless, to reject the Union's efforts to engage in collective bargaining. Instead of complying with his statutory duty to recognize and bargain with the Union, he proceeded through other unfair labor practices, detailed in the Intermediate

⁸For this reason we do not adopt the Trial Examiner's finding that no claim to majority status was made by the Union.

Report, to destroy the Union's majority among his employees. In this context the Respondent cannot argue that his refusal to recognize and bargain with the Union on October 3, 1950, was motivated by a good faith doubt as to its majority status.⁹

We find, contrary to the opinion of our dissenting colleague, that the Respondent's conduct on and after October 3, 1950, amounts to a refusal to bargain within the meaning of Section 8(a)(5) of the amended Act.

The Remedy

The Respondent's unlawful conduct consisting of interrogation, negotiating individually with his employees to defeat the Union's organizational drive, and granting benefits for the same purpose, in our opinion, discloses a fixed purpose to defeat self-organization and its objectives. Because of this and its underlying purpose, we are convinced that the unfair labor practices found are persuasively related to other unfair labor practices prescribed by the Act; that the danger of their commission in the future is to be anticipated from the Respondent's conduct in the past; and that the preventive purposes of the Act will be thwarted unless our order is coextensive with the threat. In order, therefore, to make effective the interdependent guarantees of Section 7, and to prevent a recurrence of unfair labor practices, and thereby minimize industrial

⁹Cf. NLRB v. Morris P. Kirk & Son, Inc., et al., 151 F. 2d 490, 492 (C. A. 9); Joy Silk Mills, Inc., v. NLRB, 185 F. 2d 732 (C.A.D.C.).

strife which burdens and obstructs commerce, and thus effectuate the policies of the Act, we shall, in addition to entering a bargaining order against the Respondent, order the Respondent to cease and desist from infringing in any manner upon the rights guaranteed in Section 7 of the amended Act.

Order

Upon the entire record in the case, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that Sam Zall, an individual, d/b/a Sam Zall Milling Co., Marysville, California, his agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with the American Federation of Grain Millers International Union, affiliated with the American Federation of Labor, as the exclusive representative of all his production and maintenance employees, including the truck driver, but exclusive of supervisors as defined in the Act, salesmen, and office employees.

(b) Giving effect to the agreement made with his employees on October 5 or 6, 1950, or any modification, continuation, extension, or renewal thereof, to forestall collective bargaining or deter self-organization; provided, however, that nothing herein shall be construed to require the Respondent to vary any substantive provisions of such agreement, or to prejudice the assertion by the employees of any rights they may have thereunder.

(c) In any other manner interfering with, restraining, or coercing his employees in the exercise of their right to self-organization, to form labor organizations, to join or assist the American Federation of Grain Millers International Union, A.F.L., or any other labor organization, to bargain collectively through representatives of their own free choice, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any and all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8(a)(3) of the National Labor Relations Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with American Federation of Grain Millers International Union, A.F.L., as the exclusive representative of his employees in the aforesaid bargaining unit, with respect to their rates of pay, wages, hours of work, and other terms or conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement.

(b) Give a separate written notice to each of the employees who executed the agreement of October 5 or 6, 1950, or any modification, continuation, extension, or renewal thereof: (1) That he will not

enforce or attempt to enforce the agreement in question to forestall collective bargaining or deter self-organization; (2) that employees will not be required or expected, by virtue of that agreement, to deal with the Respondent directly in respect to their rates of pay, wages, hours of work, or other terms and conditions of employment; (3) that such discontinuance of the contract is without prejudice to the assertion of any legal rights employees may have required under it, or to the assertion of any defenses thereto acquired by the Employer.

(c) Post at his establishment in Marysville, California, copies of the notice attached hereto and marked "Appendix A."¹⁰ Copies of the notice to be furnished by the Regional Director for the Twentieth Region, as the agent of the Board, should be posted by the Respondent immediately upon their receipt, after being duly signed by him or a person qualified to act as his representative, and should be maintained by him for sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps should be taken by the Respondent to insure that these notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for the Twentieth Region in writing within ten (10) days from

¹⁰In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be inserted before the words "A Decision and Order," the words "A Decree of the United States Court of Appeals Enforcing."

the date of this Order what steps Respondent has taken to comply herewith.

Signed at Washington, D. C., June 29, 1951.

PAUL M. HERZOG,
Chairman,

JOHN M. HOUSTON,
Member,

JAMES J. REYNOLDS., JR.,
Member,

PAUL L. STYLES,
Member,

[Seal] NATIONAL LABOR
RELATIONS BOARD.

Abe Murdock, Member, dissenting in part:

While joining my colleagues in finding a violation of Section 8(a)(1) of the Act, I cannot further agree on the facts in this case that the Respondent on October 3, 1950, refused to bargain with the Union in violation of Section 8(a)(5) of the Act.

It is axiomatic that a refusal, particularly an employer's refusal to recognize and bargain with a union, must be preceded by a specific request. The Board has heretofore characterized such a request as "a clear and unequivocal demand for

recognition."¹¹ An examination of the facts in the instant case reveals, as the majority concede, no evidence that the Union at any time specifically requested the Respondent to recognize it as the majority bargaining representative of his employees. Moreover, there is no evidence that the Union Representatives, who met twice with the Respondent, informed him that they were authorized by a majority of his employees to bargain on their behalf. Rather, it is apparent from the very testimony of the union agent, Gamble, that on October 3, 1950, the Union claimed only "over thirty per cent of the membership signed up." The majority, however, are satisfied that Gamble's conversation with the Respondent on October 3, 1950, together with the language of the general recognition clause contained in the blank "Master Agreement," which the Union had left with the Respondent to "study," constitute a sufficient request and claim to majority representative status. But the evidence, according to the credited testimony of the Union's representative, reveals merely that the Respondent was put on notice that the Union was organizing his plant and was requesting him to agree to a consent election. It was in this context that Gamble, the union

¹¹The Solomon Company, 84 NLRB 226. This view has recently been affirmed by the U. S. Court of Appeals for the Sixth Circuit in *NLRB v. Valley Broadcasting Co.*, 28 LRRM 2148, where the court, reversing the Board majority's finding in that case (77 NLRB 1144) and in agreement with my dissenting opinion, held that the respondent had never been presented with "a clear demand to bargain."

agent, left the blank contract with the Respondent, expressing sympathy for the Respondent's anti-union position and suggesting that the Respondent did not know "too much about the principles and policies of the organization."¹²

The majority stress the Respondent's testimony that he interpreted the remarks of Gamble as an attempt to negotiate. But in words in the mouths of inexpert witnesses are not words of art. It is clear that Gamble wanted to negotiate a consent election agreement. It is not clear, and I do not think the Board should so hold, that the Union was also requesting immediate recognition as the bargaining representative of the Respondent's employees.¹³ While I fully agree with the majority

¹²Although I agree with the Trial Examiner's finding that the Union made no claim to majority status, I cannot agree with his further finding that to do so would have been "futile." The record will not support a conclusion that the Respondent had demonstrated an inflexible determination to have no dealings with the Union. Indeed, he accepted the contract, read it, and subsequently told Gamble he thought it was "a good contract." Under these circumstances, it was incumbent upon the Union to speak up and state its claim to a majority and make a request to negotiate a contract so providing, if it was actually requesting anything more than a consent election agreement.

¹³I cannot agree with the majority that the Respondent's use of the word "negotiate" in his testimony means "collective bargaining." Gamble's testimony, which the Respondent agreed was accurate, and which the Trial Examiner credits, reveals that Gamble said: "I asked him [Zall] if he would consent to an election if we had over thirty per cent." The Respondent asked to see the author-

that the Respondent's conduct following his conversation with Gamble on October 3, 1950, was in violation of the rights of his employees under the Act, I do not believe that such conduct may properly be substituted for the requirement that a union must clearly and affirmatively make known to an employer that it is the majority bargaining representative of his employees and desires immediate recognition for the purposes of collective bargaining. In my opinion, this requirement is a condition precedent to a finding that an employer had refused to bargain with a labor organization.

Accordingly, I would dismiss the allegation in the complaint that the Respondent has refused to bargain within the meaning of Section 8(a)(5) of the Act.

Signed at Washington, D. C., June 29, 1951.

ABE MURDOCK,
Member.

NATIONAL LABOR
RELATIONS BOARD.

ization cards and Gamble refused. It was then, according to Gamble's credited testimony, that the Respondent said: "Go ahead and have your election." I interpret the testimony of the Respondent, cited in footnote 7 of the majority's opinion, to be in accord with Gamble's version of the conversation between them.

Appendix A

Notice to All Employees

Pursuant to

A Decision and Order

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, I hereby notify my employees that:

I Will Not in any manner interfere with, restrain, or coerce my employees in the exercise of their right to self-organization, to form labor organizations, to join American Federation of Grain Millers International Union, A.F.L., or any other labor organization, to bargain collectively through representatives of their own free choice, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities, except to the extent that such right may be affected by an agreement which requires membership in a labor organization as a condition of employment, as authorized in Section 8(a)(3) of the Act.

I Will bargain collectively upon request with the above-named union as the exclusive representative of all the employees in the bargaining unit described below with respect to rates of pay, wages, hours of work, and other terms and conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement.

The bargaining unit is:

All of my production and maintenance employees, including the truck driver, but exclusive of supervisors as defined in the Act, salesmen, and office employees.

I Will not give effect to the agreement executed by the employees on or after October 5, 1950, or any modification, continuation, extension, or renewal of it to forestall collective bargaining or deter self-organization.

All of my employees are free to become, remain, or refrain from becoming members of the above-named union, or any other labor organization, except to the extent that their right to refrain may be affected by a lawful agreement which requires membership in a labor organization as a condition of employment.

Dated

SAM ZALL MILLING CO.,
Employer,

By,
(Representative) (Title)

This notice must remain posted for 60 days after its date, and must not be altered, defaced, or covered by any other material.

Before the National Labor Relations Board

[Title of Cause.]

EXCEPTIONS TO INTERMEDIATE REPORT AND RECOMMENDED ORDER

Respondent Sam Zall respectfully excepts to the Intermediate Report and Recommended Order and specified as follows:

1. That the record herein shows that Respondent is not engaged in interstate commerce nor in business activities which would have a pronounced effect on commerce.
2. That the record fails to show that the above-named Union ever represented or represents the necessary percentage of Respondent's employees.
3. That the record fails to show an authorization and request to bargain or a refusal to bargain.
4. That if in fact Respondent is within the jurisdiction of this Honorable Board a representation election should be ordered.

RICH, CARLIN & FUIDGE,
Attorneys for Respondent.

Points and Authorities in Support of the Foregoing Exceptions

1. The Record Herein Shows That Respondent Is Not Engaged in Interstate Commerce Nor in Business Activities Which Would Have a Pronounced Effect on Commerce.

The Intermediate Report states as follows:

“In 1949, also, the Respondent sold, in California, poultry feeds valued at more than \$75,000 to the Vantress Hatchery and Breeding Farms, a business enterprise, which used these feeds in the production of poultry and eggs at its farms near Marysville.

The last twelve (12) lines of this page, i.e. page number one (1), constitute a portion of Respondent's brief, submitted to Board as part of the same document with exceptions to the Intermediate Report, and the said twelve (12) lines are not a part of the certified record.

Before the National Labor Relations Board,

Twentieth Region

Case No. 20-CA-503

In the Matter of:

SAM ZALL MILLING CO.

and

AMERICAN FEDERATION OF GRAIN MILLERS, INTERNATIONAL UNION, A.F.L.

Tuesday, January 30, 1951

Pursuant to Notice, the above-entitled matter came on for hearing at 10:00 o'clock a.m.

Before: Maurice M. Miller, Esq.,
Trial Examiner.

Appearances:

RICHARD H. FUIDGE, ESQ.,
RICH, CARLIN & FUIDGE, ESQS.,
423 4th Street,
Marysville, California,
Appearing for Sam Zall Milling Co.

CECIL F. GAMBLE,
American Federation of Grain Millers,
International Union, A.F.L.,
610 Santa Clara Street,
Vallejo, California.

BEN LAW, ESQ.,
Appearing on Behalf General Counsel.

Proceedings

Trial Examiner Miller: The hearing will be in order. This is a formal hearing before the National Labor Relations Board in the matter of Sam Zall, an individual doing business as Sam Zall Milling Company, Case No. 20-CA-503.

The Trial Examiner for the National Labor Relations Board is Maurice M. Miller.

Will counsel and other representatives of the parties state their appearances for the record?

Mr. Law: For the General Counsel of the National Labor Relations Board, Benjamin B. Law, Room 645 Pacific Building, 821 Market Street, San Francisco, California.

Mr. Fuidge: For respondent, Sam Zall; Rich, Carlin and Fuidge, 423 4th Street, Marysville, by Richard M. Fuidge appearing.

Mr. Gamble: For the International Federation of Grain Millers, AFL, 918 Metropolitan Building, Minneapolis, Minnesota; Cecil F. Gamble, 610 Santa Clara Street, Vallejo, California. [3*]

* * *

Mr. Law: Yes, I am. I will first offer as General Counsel's Exhibit 1, sub parts a to j, inclusive, the formal documents in the case and to identify them more specifically.

As General Counsel's Exhibit 1 part a, I offer the original charge in this matter filed under date of October 18, 1950, by the American Federation of Grain Millers International Union, AFL.

(Whereupon, the document referred to was marked General Counsel's Exhibit No. 1a for identification.)

As General Counsel's Exhibit 1b, an affidavit of service by [7] Ella P. Elliot, an agent of the National Labor Relations Board, of a copy of the original charge on Sam Zall Milling Company and General Counsel's 1b has attached to it a return receipt showing service upon Sam Zall's Milling Company as of October 21, 1950.

(Whereupon, the document referred to was marked as General Counsel's Exhibit 1b for identification.)

As General Counsel's Exhibit 1, sub part c, a copy of the first amended charge filed in the matter under date of December 15, 1950, by the same charging party.

* Page numbering appearing at top of page of original Reporter's Transcript of Record.

(Whereupon, the document referred to was marked General Counsel's Exhibit 1c for identification.)

As General Counsel's Exhibit 1 sub part d, an affidavit of service by an agent of the National Labor Relations Board of a copy of the first amended charge on the employer, having attached to it a return receipt showing service as of December 18, 1950.

(Whereupon, the document referred to was marked General Counsel's Exhibit 1d for identification.)

As General Counsel's Exhibit 1 sub part e, I offer the original complaint issued by the Regional Director for the Twentieth Region of the National Labor Relations Board on January 5, 1951.

(Whereupon the document referred to was marked General Counsel's Exhibit 1e for identification.)

As General Counsel's Exhibit 1 sub part f, I offer the original notice of hearing issued by the Regional Director on the [8] same date as the complaint.

(Whereupon, the document referred to was marked General Counsel's Exhibit 1f for identification.)

As General Counsel's Exhibit 1, sub part g, an affidavit of service by an agent of the Board of the notice of hearing of the complaint and copy of the first amended charge upon the respondent, Sam

Zall, and the charging union and that affidavit having attached to it return receipts showing service upon the parties.

(Whereupon, the document referred to was marked General Counsel's Exhibit 1g for identification.)

As General Counsel's Exhibit 1 sub part h, the original order by the Regional Director rescheduling the hearing from January 18th to date, January 30th.

(Whereupon, the document referred to was marked General Counsel's Exhibit 1h for identification.)

As General Counsel's Exhibit 1 sub part i, the affidavit of service of the order rescheduling the hearing on the parties having attached to it return receipts showing service.

(Whereupon, the document referred to was marked General Counsel's Exhibit 1i for identification.)

And as General Counsel's Exhibit 1 sub part j, the original answer in this matter filed by the respondent, Sam Zall, an individual doing business as Sam Zall Milling Company. [9]

(Whereupon, the document referred to was marked General Counsel's Exhibit 1j for identification.)

I offer General Counsel's Exhibit 1a to j, inclusive.

Trial Examiner Miller: Is there any objection?

Mr. Fuidge: No objection.

Trial Examiner Miller: Very well, General Counsel's Exhibits 1a to j will be received in evidence.

(The documents heretofore referred to as General Counsel's Exhibits 1a to j were received in evidence.)

Trial Examiner Miller: Let the record show that the exhibit has been offered and received in duplicate.

Mr. Law: I might also note that I am offering the duplicate file of exhibits.

Trial Examiner Miller: Well, I so noted for the record with respect to General Counsel's exhibits.

Is there anything else of a preliminary nature to come before us before we proceed with the testimony of any witnesses?

Mr. Law: Yes, I wish to move to amend the complaint in the following respects:

That after the words, "Marysville, California," in the first paragraph under section one of the complaint to be amended by striking the comma appearing after the word, "California," and adding the additional words, "from points in the United States outside the State of California." [10]

Mr. Fuidge: There will be no objection to that.

Trial Examiner Miller: Very well, there being no objection, the motion to amend is granted.

Mr. Law: Now, before the hearing—

Mr. Fuidge: Excuse me, Mr. Law, see if my answer now is—stands to this:

May the answer be amended to admit that during 1949, the respondent purchased grain, alfalfa concentrate and other materials valued at more than two hundred fifty thousand dollars, of which materials valued at more than ninety thousand dollars were shipped directly to the respondent's place of business in Marysville, California, from points in the United States outside of the State of California and alleges that said purchases were made from brokers within the State of California on contracts with said brokers that payment for said purchases were made to said brokers within the State of California.

Trial Examiner Miller: Is the intent of the amendment, Mr. Fuidge, to encompass within the terms of that last addition the entire amount of grain, alfalfa concentrate and other materials purchased, that is the entire amount of two hundred and fifty thousand dollars approximately or more?

Mr. Fuidge: I think I should confine it to the ninety thousand dollars alleged to have been received in interstate commerce.

Trial Examiner Miller: That, as far as I understand, would [11] be the only fact that would be material. Your allegation as to the amount physically originating outside of the state, the transfers, titles and payments were all made within the State.

Mr. Fuidge: That is correct.

Trial Examiner Miller: Is there any objection to the amendment?

Mr. Law: No, indeed not.

Trial Examiner Miller: Very well, the amendment to the answer is noted for the record.

Mr. Law: While we are on this line, Mr. Fuidge and I have discussed the—before the hearing opened, certain stipulations of fact. In that connection I am prepared to stipulate as a fact that the allegation of the answer with respect to the purchases of materials originating outside the State being made through brokers within the State and payments being made to these brokers within the State, is the fact.

Mr. Fuidge: I appreciate that extremely.

Trial Examiner Miller: Very well, the stipulation is noted for the record.

Mr. Fuidge: Now, I am prepared to stipulate with Mr. Law a matter which was denied on the lack of information, I believe. Now, the stipulation being that as a matter of fact, during 1949, Vantress Hatchery and Breeding Farm sold and shipped from its farms near Marysville to points in the United States outside of California, eggs and poultry valued at more than sixty thousand [12] dollars.

Mr. Law: All right, thank you. Now, as I understand it in checking with Mr. Vantress you have obtained certain additional information from him which you wish to enter into the record by way of stipulation.

Mr. Fuidge: Shall I put that in now? I might just as well.

Mr. Law: Yes.

Trial Examiner Miller: Well, if this is a separate stipulation, may we at this time note for the record in the—is it to be accepted?

Mr. Fuidge: I stated it before.

Trial Examiner Miller: It is noted for the record.

Mr. Fuidge: It is stipulated between Mr. Law and me, subject to his approval on the record here, that if Kenneth Vantress, I. K. Vantress, being one of the members of the Vantress Hatchery and Breeding Farms were called, that he would testify that the feed purchased by him from the respondent is fed only to breeding stock, that the feed is not fed to the baby chicks, that the breeding stock is not shipped out of the State and that out-of-State shipments consist in the main of eggs and that shipments of chicks are rare and in very minor percentage in proportion to the shipment of eggs. You would stipulate to that, Mr. Law, as a matter of fact?

Mr. Law: Yes, I would. Might I suggest in addition that the eggs or that he would testify that the eggs which are [13] shipped out of the State are primarily eggs for hatching baby chicks rather than for consumption?

Mr. Fuidge: That is correct. That is right. Now, without asking you to stipulate to the legal fact, will you stipulate that the Vantress Hatcheries is not subject to the provisions of the Wages and Hour Law and not until the enactment of the new Social Security Act was it subject to the provisions of the then existing Social Security Act?

Mr. Law: Well, let's see. I am a little disturbed to entering stipulations with respect to possible legal conclusions. I would stipulate that Mr. Vantress would so testify.

Mr. Fuidge: That is what I asked you, that Vantress would testify that he is not subject to Wages and Hours Law and not until the enactment of the present Social Security Act was his institution subject to the then existing Social Security Act.

Mr. Law: Yes.

May we stipulate further that Mr. Vantress would testify if called and further that it is the fact that the out-of-state shipments of Vantress Hatchery and Breeding Farms amounting in value to more than sixty thousand dollars, in 1949, consisted primarily of hatching eggs.

Mr. Fuidge: I will so stipulate.

Trial Examiner Miller: Off the record.

(Discussion off the record.)

Trial Examiner Miller: On the record. Let the record [14] show that during the period of discussion off the record that the Trial Examiner raised a question as to the state of the respondent's business and the business of Vantress Hatchery which has been the subject of stipulation heretofore in 1950, and its comparison, if any, with the figures previously mentioned applicable to 1949. I understand, as a result of our discussion off the record that the parties are prepared to enter into a stipulation with respect to the relationship between the

1950 business of the respondent and Vantress Hatcheries, as compared with the 1949 business set forth in the complaint and in the various stipulations.

Mr. Fudge: That is correct.

Mr. Law: Yes, and in that connection I propose that stipulation that the figures, both with respect to both Sam Zall, individually doing business as Sam Zall Milling Company and Vantress Hatchery and Breeding Farms are approximately the same for the year 1950, as they were for the year 1949.

Mr. Fudge: So stipulated.

Trial Examiner Miller: Very well, the stipulation is noted for the record.

Mr. Fudge: In other words, where the complaint reads 1949, it may also read 1950.

Trial Examiner Miller: Well, should it become necessary for me to make a finding of fact in the matter, I would on the basis of the record as it now stands recapitulated in detail the [15] figures for 1949, and merely add the statement in terms of the stipulation, that the party agrees that 1950 was comparable.

Mr. Law: All right. As the first witness for the General Counsel, I will call Mr. Zall as an adverse witness.

SAM ZALL

called as a witness by and on behalf of the General Counsel, being first duly sworn was examined and testified as follows:

Direct Examination

By Mr. Law:

Q. Mr. Zall, your name is Sam Zall?

A. Yes.

Q. And you are the employer named as respondent in this matter, is that right? A. Yes.

Q. What is your business address?

A. 218 9th Street, Marysville, California.

Q. You do business as the Sam Zall Milling Company? A. Yes.

Q. And in the name filed under which you do business, is company spelled out or is it abbreviated? A. It is abbreviated.

Q. Co.? A. Yes.

Q. What is your business address?

Trial Examiner Miller: You have that.

Mr. Law: All right. [16]

Q. (By Mr. Law): For how long have you been engaged in business as the Sam Zall Milling Co.? A. Approximately eleven years.

Q. There is one commerce figure I would like to ask you about which we haven't already covered. Approximately what is the annual value of all of your sales?

A. Well, it is roughly five hundred thousand.

(Testimony of Sam Zall.)

Q. And that was true in 1949, and in 1950, as well? A. Yes.

Q. As I understand it, all of those sales are made in California, to purchasers in California?

A. Yes.

Q. Do you make any out-of-state sales at all?

A. No.

Q. And it is true, is it not, that your principal customer is the Vantress Hatchery and Breeding Farms?

A. They are the largest customer I have, yes.

Q. Now, one other question——

Mr. Fudge: I beg your pardon, you mean that is the largest single customer?

Mr. Law: Yes, that was the intent of my question.

Trial Examiner Miller: Had you so understood the question?

The Witness: Yes.

Mr. Fudge: Let me ask you, actually yes or no?

The Witness: Yes. [17]

Q. (By Mr. Law): Is your only place of business the Sam Zall Milling Co., in Marysville, California? That is, is that your only mill?

A. Yes.

Q. You have no other mills at other points?

A. No.

Q. Could you describe the physical plant here at Marysville?

(Testimony of Sam Zall.)

A. Well, we're engaged in the preparation of preparatory feeds and the sale of the same to farmers in the immediate vicinity.

Q. Well, you have two buildings, have you not, two adjacent buildings?

A. Well, there is just the one building, that is the Sam Zall Milling Co.

Q. I see. And one part of that building is devoted to storage of grain and other material, is it not?

A. One part of that building is for the purpose of storing the ingredients which are used in the manufacture of the finished product.

Mr. Fudge: Let me see if I understand something here. There are two enterprises, the Sam Zall Milling Co., which Mr. Zall is the sole owner of. There is also a corporation which is known as the Farmers' Public Warehouse and High and Dry Warehouse, Inc., which is a warehouse incorporation and operates the public utility on the corner of 9th and B. Now, it may be [18] that some of the products, I mean the elements of the products prepared by the Sam Zall Milling Co. are stored in the utility. Perhaps that is what you have in mind.

Mr. Law: That may be. What confused me is—

Q. (By Mr. Law): Has Mr. Fudge correctly stated the facts?

A. Yes, in other words, I store commodities in many public utility warehouses.

(Testimony of Sam Zall.)

Q. I see, all right. Now in your building where you operate the mill, do you have certain machinery for mixing and grinding the feeds and other materials?

A. I have the necessary machinery to prepare the feed.

Q. And in the same building, do you have an office? A. Yes.

Q. Now, how many employees does Sam Zall Milling Co. have?

A. Well, we steadily have between nine and ten. Part of the time nine, and part of the time ten.

Trial Examiner Miller: That is exclusive of yourself?

The Witness: Yes.

Q. (By Mr. Law): Now, I want to get a brief description of the duties of each of those employees. You are in charge of the entire operation?

A. That is right, yes.

Q. And who is next in authority under you?

A. Well, there are two people, one is Mrs. F. Miles who is in charge of the office and then there is Mr. Cotton. [19]

Trial Examiner Miller: How is that name spelled?

The Witness: C-o-t-t-o-n.

A. (Continuing): —who is in charge of the production and sales as well as being salesman in the retail department.

Q. (By Mr. Law): Does Mrs. Miles have any clerical help under her?

(Testimony of Sam Zall.)

A. No one steadily, no.

Q. She attends to the bookwork involved in the business, does she? A. That's right.

Q. And she works in an office entirely?

A. That's right.

Q. Now, does Mr. Cotton, in practice, hire or discharge employees?

A. Only with—in conjunction with myself.

Q. He discusses the matter with you?

A. That's right.

Q. Does he make recommendations with respect to the hiring or discharging employees?

A. Yes, he does.

Q. And do you consider those recommendations in reaching your decision?

A. Most of the time, yes.

Q. Now, what other employees do you have—I am interested now in the type of work that they do, their classifications rather [20] than their particular name.

A. Well, we have a—the sack sewers, the feed mixers, grinder man, truck drivers—

Trial Examiner Miller: Just a moment, you spoke of a sack sewer, feed mixer, grinder man, one person to each of those titles?

The Witness: Not necessarily, as a matter of fact, they are all sack sewers, actually.

Trial Examiner Miller: Well, I was interested because as I got your testimony, these were all mentioned in the singular and then you spoke of truck drivers in the plural.

(Testimony of Sam Zall.)

The Witness: Well, we do have two truck drivers, but those could all be in plural, because every small business of the type I have, every man is more or less ambidextrous, you might say. He works in every job.

Trial Examiner Miller: Go ahead, I won't interrupt further.

The Witness (Continuing): —they have definite duties, however, they do fill in wherever it is necessary and they can do any one of those jobs.

Q. (By Mr. Law): Are there any other classifications? A. I have a salesman.

Q. Is that salesman, Mr. Cotton?

A. No, that is Mr. Darchuck, he is an outside salesman.

Q. How is his name spelled?

A. D-a-r-c-h-u-k. [21]

Q. Is his part of the work to visit your customers and make sales to them? A. That's right.

Q. Does he regularly work in the plant?

A. No.

Mr. Fudge: Work in the what, Ben?

Mr. Law: In the plant.

Q. (By Mr. Law): Now, any other types of employees in the plant?

A. Well, the only other classification you might have would be the take-off men, that more or less ties in with other classifications.

Q. What is the function of the take-off man?

A. Well, the man that fills the sack with the feed that's been prepared, and hands the sack over

(Testimony of Sam Zall.)

to the sack sewer, who sews it on the sewing machine.

Q. All right. Now, these employees you have named, the employees you have referred to as sack sewer, feed mixer, grinder man, truck drivers and take-off man are somewhat interchangeable; any man might perform any of those functions?

A. Most of the functions, at least.

Q. You do, however, have one employee who ordinarily specializes as the grinder man, do you not? A. Yes.

Q. And you have one who specializes as feed mixer? [22] A. That's right.

Q. Now, the two truck drivers, do they confine themselves entirely to driving trucks or do they work in the plant?

A. One truck driver confines himself entirely to driving a truck and the other truck driver works in the plant part of the time and drives the truck another part of the time as the need requires.

Q. And the truck driver who drives entirely delivers the feed from the mill to the customers, does he not? A. That's right.

Q. Does he also bring deliveries of the materials or the ingredients going into the feed from suppliers? A. On rare occasions.

Mr. Fuidge: If I may interpose an objection here. That insofar as the drivers are concerned, or with particular reference to the ones that only drive, it may be entirely incompetent, irrelevant and immaterial in that I understand the Teamsters

(Testimony of Sam Zall.)

Union, whom I assume would have jurisdiction of such vocation.

Mr. Law: Well, if I may, I am interested in establishing facts now and I think that perhaps your objection is going to the inclusion of the truck drivers in the unit rather than to the admissibility of the evidence of his duties.

Mr. Fuidge: That may be.

Trial Examiner Miller: Off the record.

(Discussion off the record.) [23]

Trial Examiner Miller: On the record.

Q. (By Mr. Law): Now, Mr. Zall, I am going to ask a few questions about comparative pay rates; I am not going to ask about specific rates. Do the employees who work as sack sewer, feed mixer and grinder man, truck drivers and take-off men, receive substantially the same rate of pay?

A. Well, substantially, there are differences.

Q. There are differences, yes. Are they all paid an hourly rate? A. Yes.

Q. And how great is the difference between the highest and the lowest in terms of cents?

A. About 10 cents an hour, I believe.

Q. Is that difference based primarily on seniority of the employee, or is it based upon the type of job which he performs most of the time or a combination of both?

A. Well, yes, you could say a combination of both.

Q. Now, as I understand it, either you or Mr.

(Testimony of Sam Zall.)

Cotton direct the work of the other employees at the plant, is that correct?

A. Well, when necessary. By far and large every man knows what he has to do; it is such a small plant it isn't necessary to do much correcting. Occasionally there is some guiding to do as far as what has to be done that particular day or something unusual might have to be done, they might have to be told about it. [24]

Q. And you are—if you are there, you make the decision in that respect, do you?

A. That is right.

Q. And if you are away, then it is Mr. Cotton that is responsible for making the decision?

A. That's right.

Q. Now, as of October 3, 1950, which is the date of the alleged refusal to bargain, who were the particular employees performing the duties of sack sewer, feed mixer, grinder man, truck drivers and take-off man? I would like to get the names of the people employed as of October 3, 1950.

A. Mr. Adams, Mr. Mathews.

Q. First names? A. Chuck Adams.

Q. Is that Charles Adams?

A. I think it is. I don't know, to be honest with you.

Trial Examiner Miller: Would you identify them by job description that most nearly describes the work that he does?

The Witness: Take-off man. Otis Mathews, sacksewer; Ernest Curt, mixer man—

(Testimony of Sam Zall.)

Trial Examiner Miller: How is that name spelled?

The Witness (Continuing): —C-u-r-t. Jess Stovall, grinder man; S-t-o-v-a-l-l. I can't think of Red's name—R. E. Skinner.

Q. (By Mr. Law): What is his general classification? [25]

A. Well, he is combination truck driver and mill worker; he fills in wherever he is needed.

Q. Now, did you—

A. There is Roy Shoemaker.

Q. He was employed as of October 3rd?

A. No, he wasn't; he came after. He had, however, been employed before, for a short interval; he was gone, and then he came back.

Trial Examiner Miller: His name is spelled how?

The Witness: Shoemaker, S-h-o-e-m-a-k-e-r; he is an assistant grinder man.

Q. (By Mr. Law): As of October 3, 1950, you say he was not working. Had he resigned? Was he ill?

A. Well, he had gone to work for this other enterprise I am interested in, which is the High and Dry Warehouse and the Farmers' Public Warehouse, by my direction.

Q. You had transferred him to this other enterprise? A. This other occupation, yes.

Q. And then subsequently you called him back?

A. No, his work was finished out there and he came back.

(Testimony of Sam Zall.)

Q. All right; now, did you have a C. L. Howard or Gilbert Medina as of October 3, 1950?

A. Yes.

Trial Examiner Miller: That name is C. L. Howard?

The Witness: That's right—E. L. Howard, he was a truck driver. [26]

Q. (By Mr. Law): Was he a full-time truck driver? A. Yes, he was.

Q. Gilbert Medina; what was his?

A. He was a combination truck driver and mill worker.

Q. I take it, then, that either Mr. Skinner or Mr. Medina or both of them did some truck driving and worked in the mill as well?

A. Yes, they did.

Q. And that Mr. Howard was the full-time driver?

A. That is right. However, those two last men mentioned are now in the armed services of the United States of America, no longer employed at my establishment.

Mr. Fuidge: Which two is that, Howard and Medina?

The Witness: That's right, Howard and Medina.

Q. (By Mr. Law): When did they leave to enter the Army?

A. Oh, in the last thirty days.

Q. Now, a few additional questions to complete the record: Charles Adams' middle initial is H., is it not? A. I wouldn't swear to it.

(Testimony of Sam Zall.)

Q. Do you know if Otis Matthews' middle initial is A? A. I wouldn't know.

Q. And Ernest Curt, is his middle initial C, or do you know? A. I don't know.

Mr. Law: I might state that I propose to offer some evidence [27]—in the form of authorization for membership cards indicating that such are the middle initials of the people named, if there is any dispute about the name being that of some other fellow.

Mr. Fuidge: If you tell me those are their initials, Mr. Law, that is good enough for me.

Mr. Law: Well, I have no personal knowledge on it.

Mr. Fuidge: Well, if the records show that, that is good.

Q. (By Mr. Law): Now, which of the employees you have named are still working for you, Mr. Zall? A. Well—

Q. I will run down the list if that makes it easier: Charles Adams? A. Yes.

Q. Otis Matthews? A. Yes.

Q. Ernest Curt? A. Yes.

Q. Jess Stovall? A. Yes.

Q. R. C. Skinner? A. Yes.

Q. Roy Shoemaker is working for you now, is he? A. Yes.

Q. And you have already testified that E. L. Howard and Gilbert Medina have gone into the armed services? [28] A. Yes.

(Testimony of Sam Zall.)

Q. Have you replaced Howard and Medina with any other employees?

A. Medina has been replaced by Skinner, who has been already on the pay roll, and Howard has been replaced by Ernst—I can't think of his last name.

Q. All right. I don't think it matters.

A. At any rate, he has been replaced.

Q. And have the following people worked continuously for you since October 3, 1950: Charles Adams? A. Yes.

Q. Otis A. Matthews? A. Yes.

Q. Ernest Curt? A. Yes.

Q. Jess Stovall? A. Yes.

Q. And R. C. Skinner? A. Yes.

Mr. Law: No other questions at this time. I may recall Mr. Zall.

Mr. Fudge: We have no questions of Mr. Zall at this time.

Trial Examiner Miller: Very well. There is just one thing I wanted to get clear on.

You gave us a list of the various jobs, job functions or [29] job titles that were performed in your mill, and then later on in response to Mr. Law's questions you named these seven individuals, five of whom are still in your employ and doing those functions. Are there any other persons in the employ of your company that work as sack sewer, feed mixer, grinder man, take-off man or truck drivers other than the five individuals still in your employ who perform those functions of the two

(Testimony of Sam Zall.)

individuals who were in your employ in October?

The Witness: Any steady employees, you mean?

Trial Examiner Miller: Well, if there is the problem of some part-time employees, we would like to hear about it.

The Witness: Well, occasionally we do hire some part-time employee, and I can't tell you his name because he has only been there a short time and only worked as we needed him.

Trial Examiner Miller: Well, is the employment of a short-time or part-time employee a seasonal phenomenon or does it happen at odd times during the year?

The Witness: At odd times.

Trial Examiner Miller: About how frequently?

The Witness: Oh, it might be once a week; it might go along for a month without getting part-time help. There are times when we might hire as high as five part-time employees for one or two days.

Trial Examiner Miller: What sort of situation would create that necessity? [30]

The Witness: Oh, the arrival of the cars or ingredients that have to be unloaded, or possibly the fact that some man might be sick.

Trial Examiner Miller: Well, the hiring of this part-time help, is that in relation to the business of the milling or the business of this public warehouse that you have been speaking about?

The Witness: No, that is in relation to the business of the milling company.

(Testimony of Sam Zall.)

Trial Examiner Miller: But if I understand you correctly, that would be on an intermittent basis, with no regularity to it at all?

The Witness: No regularity whatsoever.

Q. (By Mr. Law): And do the people who are from time to time hired for extra work—I should reverse the question—do the regular employees ordinarily do the type of work for which you occasionally hire extra people?

A. Well, they do and they don't. In other words, I don't hire four or five extra men and two or three extra men to replace Ernest Curt, for instance. If he is on the job and there, that's his job, and no one else is hired to do his work or similar work.

Q. What I intended was, I understand that if you had, say, a large shipment of materials that had to be unloaded, you might have to hire extra people? [31] A. That's right.

Q. But in the ordinary course of receiving routine shipments, the people you have already named here as the regular employees do the work, do they not?

A. Whenever it is possible and feasible, they do the work.

Q. And occasionally there is simply too much for them?

A. Either too much or there is a time limit for unloading the cars. We only have forty-eight hours to unload the cars, if they do come by car, and they have to be unloaded in that period, and it is not

(Testimony of Sam Zall.)

feasible for the regular employees that are there to unload it and we have to get extra help.

Mr. Law: No further questions.

Mr. Fudge: No questions at this time.

Trial Examiner Miller: You are excused.

(Witness excused.)

Mr. Law: Now, to keep the record clear as we go along, I might observe that the appropriate unit as alleged in Paragraph 3 of the complaint is intended to cover the persons who perform the work Mr. Zall has just described of sack sewing, feed mixing, dragger-man, truck drivers, take-off men and any other incidental jobs such as unloading, the physical production jobs in the mill, and the intent is to exclude Mrs. Miles as an office employee and Mr. Cotton as both a salesman and a supervisor, and further to exclude Mr. Darchuk as a salesman.

Trial Examiner Miller: Very well. The record will so show. [32]

Mr. Law: As the next witness for the General Counsel, I will call Mr. Gamble.

CECIL F. GAMBLE

called as a witness by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Law:

Q. What is your full name, for the record, Mr. Gamble? A. Cecil F. Gamble.

(Testimony of Cecil F. Gamble.)

Q. What is your business address?

A. 610 Santa Clara Street, Vallejo, California.

Q. What is your business or occupation?

A. An organizer for the American Federation of Grain Millers, International Union, 918 Metropolitan Building, Minneapolis 1, Minnesota.

Q. And how long have you held that position?

A. Since May 15, I believe.

Mr. Fudge: 1950?

The Witness: 1950.

Q. (By Mr. Law): That organization you have named is the organization who filed the charges in this matter? A. That's right.

Q. Did you have any position with it before May 15, 1950?

A. I have been the president of Local 71 of the American Federation of Grain Millers International of Vallejo, California, for [33] four years. I was just sworn in the last December for the fifth term.

Q. Now, what is the American Federation of Grain Millers?

A. The American Federation of Grain Millers International Union is a duly chartered organization by the American Federation of Labor and has jurisdiction of over-all production of grain, rice, soy beans or any commodities that would be grain for human and animal consumption.

Q. In your capacity as an organizer for the union since May 15, 1950, and as president of Local

(Testimony of Cecil F. Gamble.)

71 in Vallejo for four years, do you know whether or not the union has a constitution and bylaws?

A. They do.

Q. I will show you a booklet marked for identification as General Counsel's Exhibit 2 and ask you if that is the constitution of the charging union?

(Whereupon the document referred to was marked as General Counsel's Exhibit No. 2 for Identification.)

A. This is the constitution and bylaws of the American Federation of Grain Millers International Union.

Mr. Counsel, I would like to make one correction. I made a statement that I was the president for five years for the American Federation of Grain Millers International. Now, we have only been duly chartered for two years. It was the American [34] Federation of Grain Processors, prior to two years ago. Just for clarification, that is.

Q. There has been a change?

A. There has been a change. We had—have the international charter for two years.

Q. Under the present name?

A. That's right.

Q. All right. Does the union seek to represent employees of various employers in the milling industry? A. Yes.

Q. Does it, in fact, have contracts covering wages, hours and conditions of work for such employees with various employers? A. Yes, sir.

(Testimony of Cecil F. Gamble.)

Mr. Law: I will offer General Counsel's Exhibit 2 in evidence. The purpose of this testimony is simply to establish that the union is a labor organization within the meaning of the Act.

Trial Examiner Miller: Since—well, I was going to make an observation, but I will wait for the development of the record. You offer it for the record?

Mr. Law: Yes.

Trial Examiner Miller: Is there any objection?

Mr. Fuidge: No.

Trial Examiner Miller: Very well. General Counsel's Exhibit No. 2 will be received into evidence, there being no objection. [35]

(The document heretofore referred to as General Counsel's Exhibit No. 2 for Identification was received in evidence.)

Trial Examiner Miller: For the sake of the record, Mr. Witness, at this time will you direct my attention to those portions of the exhibits which are germane to the issue?

Mr. Law: I think the primary article I am interested in is Section 2 of Article 1. That appears on page 1 of the booklet and is titled "Object."

Trial Examiner Miller: Very well. I merely wanted that for the record so that we wouldn't have to search all four corners of the document.

Trial Examiner Miller: Off the record.

(Discussion off the record.)

(Testimony of Cecil F. Gamble.)

Trial Examiner Miller: On the record.

Q. (By Mr. Law): Now, Mr. Gamble, have you ever met and had any conversation with Mr. Sam Zall, who just testified here this morning, prior to today? A. Yes, sir.

Q. When did you first meet or have any conversation with him?

A. Around September 26th, if I am not mistaken. I don't remember exactly the date.

Q. It was about—of what year?

A. Of 1950.

Q. And where was the meeting? [36]

A. In his office at his plant in Marysville.

Q. Was anyone else present besides you and Mr. Zall? A. Mr. Hanifin was present.

Q. Who is Mr. Hanifin?

A. Mr. Hanifin is my assistant as an organizer of the American Federation of Grain Millers.

Q. And what is his first name? A. John.

Trial Examiner Miller: How is that last name spelled?

The Witness: H-a-n-i-f-i-n.

Q. (By Mr. Law): Was anyone else present aside from Mr. Hanifin and you and Mr. Zall?

A. No.

Q. Now, what was your conversation with Mr. Zall on that occasion?

A. I went in to meet Mr. Zall and make his acquaintance and express our desires to organize his employees, to make his acquaintance—

Mr. Fuidge: I submit this is not responsive to the question.

(Testimony of Cecil F. Gamble.)

Q. (By Mr. Law): My question was: What was the conversation, not what you went in for.

A. I am sorry. The conversation—may I get off the record for a minute? I want to ask a question.

Trial Examiner Miller: Off the record.

(Discussion off the record.) [37]

Trial Examiner Miller: On the record.

The Witness: We met Mr. Zall, we stated our position that we were planning on organizing his employees and starting an organizing drive in this area. The balance of the conversation was to explain the purposes and principles of the American Federation of Grain Millers and to present him with a contract for his study and approval.

Q. (By Mr. Law): Well, now, let's see. I am not sure that we were getting what was actually said. As I understand it, you went in and told Mr. Zall that you intended to seek representational rights for his employees? A. That's right.

Q. And did he make any reply?

A. He said that his plant was like a big family and that whenever he had any trouble in the plant why he went out and adjusted them, and he said that he was a man of a few words and he laid his cards on the table and says, "I don't want a union here and my people do not need a union." And I stated to him that I could appreciate his position, now not knowing too much about the principles and policies of the organization, but after we had got better acquainted, why he would be more satis-

(Testimony of Cecil F. Gamble.)

fied. And he says, "I have stated my position; we do not need a union in this plant."

Q. All right. Now, you said something about leaving a contract or a proposed contract. What happened in that connection? [38]

A. I presented him with a contract, he accepted it.

Mr. Fudge: Wait just a minute. I will object to that as being a conclusion of the witness. Unless he means by that that he took it in his hands.

Mr. Law: Well, let's see, I intend to offer the document. It isn't, of course, offered to establish any contract, but if I may, I think I will clear that up.

Trial Examiner Miller: I will defer ruling on the objection.

Mr. Law: I think Mr. Fudge's objection is well taken.

Trial Examiner Miller: Very well; for the record, then, to clear up any further developments, the answer will be disregarded to the extent that it implies a legal acceptance of the document.

Mr. Fudge: Thank you.

Q. (By Mr. Law): I will show you a document consisting of ten mimeographed pages and ask if that is what you have referred to as a contract which you presented to Mr. Zall?

A. That is the same as I presented to Mr. Zall.

Q. Did you present it to Mr. Zall in the same form as it appears on General Counsel's Exhibit No. 3, did you? A. I did.

(Testimony of Cecil F. Gamble.)

Q. All of the blanks were blank?

A. That's right.

Q. Now, did you have any conversation with respect to General Counsel's Exhibit No. 3 for Identification? A. This is number 3?

Q. Yes, the proposed contract? [39]

(Whereupon the document referred to was marked as General Counsel's Exhibit No. 3 for Identification.)

A. No, we didn't go into any discussion, other than Mr. Zall stated that he would take the contract and study it. I endeavored to make an appointment and he said that he would take it and read it and study and bring it back, and for me to drop back in a week or so and if he liked it he would make an appointment at that time.

Q. And was that all you remember of the conversation on or about September 26th?

A. That is right. We left the premises at that time.

Q. Now, as I understand it, you told Mr. Zall that you intended to seek to organize his employees. As of the time of that conversation, had you engaged in any organizational activities among the employees?

A. We had one man, Jess Stovall.

Mr. Fudge: That is not responsive to the question and doesn't answer it. Object to it as such.

Trial Examiner Miller: Well, I would assume

(Testimony of Cecil F. Gamble.)

it to be partly responsive at least; can you develop it further, Mr. Law?

Q. (By Mr. Law): Yes; when you say you had one man, what do you mean?

A. I had one man's application card made out. A recognition card.

Q. Had you contacted any of the other [40] employees?

A. We had not had the opportunity at that time. We had given the card to Mr. Stovall.

Q. Well, he was the only employee?

A. Yes, that's right.

Q. Now, when had you seen Mr. Stovall or approximately when?

A. Around the 18th of September, if my memory serves me right.

Q. Now, where was it that you saw Mr. Stovall for the first time?

A. We saw him at the plant. We invited him to the hotel that evening.

Q. And did he sign an authorization or membership card at any time when you saw him?

A. That evening at the hotel.

Q. I show you General Counsel's Exhibit No. 4 for Identification and ask you if you have seen that before?

(Whereupon the document referred to was marked General Counsel's Exhibit No. 4 for Identification.)

A. I saw that and that is my signature at the bottom—attached.

(Testimony of Cecil F. Gamble.)

Q. When did you first see this, General Counsel's Exhibit No. 4?

A. You mean the first time I saw it?

Q. Yes.

A. It was the date that I made it out, or do you want it as an exhibit?

Q. Yes. [41] A. Just at this moment.

Q. Well, did you see it at the time you saw Mr. Stovall at the hotel?

A. Well, yes, definitely.

Q. And did Mr. Stovall sign it?

A. Mr. Stovall signed it.

Q. Did you see him sign it?

A. That's right.

Q. And was he the same man you had seen earlier at the plant? A. That's right.

Q. All right. Now, did you subsequently see, or have any conversations with other employees at the plant?

A. Not up to that time, but at a later date we did.

Q. And when was that that you—

A. October 2, if my memory serves me right.

Q. Where did you first see the other employees?

A. I first saw them when I saw Mr. Stovall, but I did not contact them until October 2nd, if my memory serves me right on that date.

Q. When you saw them, you mean—

A. I just saw them, but I did not discuss anything with them at that time.

(Testimony of Cecil F. Gamble.)

Q. Now, on October 2nd, did you have any conversation with any of the other employees?

A. I did. [42]

Q. And where was this conversation?

A. It was on the premises of the Sam Zall Milling Co.

Q. I will show you four additional—

Mr. Fuidge: Excuse me, did you offer that No. 4?

Mr. Law: I have not; they are just identified.

Mr. Fuidge: The contract is 3, is it?

Trial Examiner Miller: Yes.

Q. (By Mr. Law): I will show you four additional white cards which I have marked for identification as General Counsel's Exhibit—Exhibit 5, sub part a to d, inclusive, and ask you if you have seen those before?

(Whereupon the documents referred to were marked as General Counsel's Exhibit 5, a to d, inclusive, for identification.)

A. Yes, sir, I have.

Q. And when did you first see them?

A. I saw them the date that they were made out.

Q. And when was that?

A. It was on October 2nd, as I previously stated.

Q. Well, now, you say "when they were made out"; did you see the persons whose names appear thereon?

A. I did, and I had a conversation with them in regard to their signing an application card.

(Testimony of Cecil F. Gamble.)

Q. Did you see each of the individuals sign his card where the place appears, "Signature of applicant," on the lower left-hand [43] corner of the card? A. I did.

Q. And does your signature—or did you sign the right-hand corner of each card?

A. I signed the right-hand corner of each—of these, and one of them is Mr. Hanifin.

Mr. Fudge: What is the name of those cards?

The Witness: Curt, Skinner and Adams were the three I signed at the plant, and Matthews who signed at the hotel that evening, and in the right-hand corner Mr. Hanifin signed as an authorized signature.

Q. (By Mr. Law): Yes, that is referring to General Counsel's Exhibit 5, sub part b. Did you see Mr. Matthews, however, sign General Counsel's 5, sub part b? A. I did.

Q. Now, did you subsequently obtain signed applications for membership cards from other employees at the plant? A. Yes, sir, I did.

Q. When was that? A. Well, it was—

Q. How long after?

A. Well, it was not very long; it would be within the next two or three weeks after this that Mr. Howard and Medina.

Q. Now, after, on or about September 26th, did you meet with Mr. Zall and have any conversations with him? [44] A. You mean—

Q. After September 26th?

A. Not until October the 3rd, I believe.

(Testimony of Cecil F. Gamble.)

Q. How do you place the date, October 3?

A. It was right after we had signed the employees on October 2. It was the next day.

Q. All right, and where was this meeting with Mr. Zall?

A. Outside of his office where we met, and we walked out onto the sidewalk by the front door entrance to his plant.

Q. Was anyone else present?

A. Mr. Hanifin was present.

Q. Anyone else? A. No.

Q. Now, what was your conversation with Mr. Zall on that occasion?

A. I asked Mr. Zall if he had read and studied the contract. He said "Yes," he had. I asked him what he thought of it, and he said he thought it was a very good contract, but that was one man's opinion. I asked him if he would consent to a joint election which was customary between unions and employers for the purpose of recognition of the union as his employees' representative. He stated that he had already previously stated his position that he did not want a union in the plant. I asked him if he would consent to an election if we had over thirty per cent. [45]

Q. Thirty per cent what?

A. Thirty per cent of the membership signed up. Signed up means the authorization cards. He says, "Have you got them?" I said "Yes." He said, "Let me see them." I said, "Oh, no." I said, "That is for the Board, and if the Board decides

(Testimony of Cecil F. Gamble.)

to let you see the authorization cards, that will be another matter." He stated again that he had previously made himself known on this matter and at that time we should have, and he went into the plant and we left the premises.

Q. You say he stated that he had previously made himself known on this matter. Are you attempting to repeat his words?

A. I was attempting to repeat his words as nearly as I possibly could, yes.

Q. Is that all you remember about your conversation with him?

A. That is all at this time that I can remember.

Q. Did you discuss petitioning for an election?

A. Well, I did discuss petitioning for an election.

Q. What did you say in that connection?

A. I said to him, I says—but that was after I had made the statement that if we had over thirty per cent of the signatures and he asked me if—we have already gone through that—he says, "Go ahead and have your election." And he says, "That is when our good relations will cease, when you have an election."

Q. And is that all of the conversation, as you remember it?

A. That is the conversation as I remember it.

Q. Now, did you have any further conversation with Mr. Zall between October 3, 1950, and this morning? A. I have not.

(Testimony of Cecil F. Gamble.)

Q. Now, did you thereafter file a petition with the National Labor Relations Board?

A. I filed a petition for recognition on the—December 4.

Q. December?

A. I have it there in my files, but the date has just slipped me. October the 4th, because it was right after this that I had met Mr. Zall that I filed for a petition for an election.

Mr. Fuidge: What was the balance of that answer?

(Answer read.)

The Witness: Yes, it was October 4th.

Q. (By Mr. Law): Was that in Case No. 20-RC-1171? A. Yes, sir.

Mr. Law: I don't know that any purpose is served by offering a copy of the petition.

Mr. Fuidge: Well, I frankly never heard of it before. Have we ever received any notices of filing such a petition?

The Witness: I received mine.

Mr. Law: I don't know whether you did or not.

Q. (By Mr. Law): Did you subsequently withdraw the petition? A. I did.

Q. Do you know about when you withdrew it?

A. You've got me; I've for the—I've got the date there, [47] right over there in my file.

(Discussion off the record.)

Trial Examiner Miller: On the record.

(Testimony of Cecil F. Gamble.)

Q. (By Mr. Law): I have shown you a copy of a document which I have also shown to counsel; does that refresh your recollection as to when you withdrew the petition? A. That's right.

Q. In Case No. 20-RC-1171?

A. That's right.

Q. When did you request withdrawal of the petition? A. October 16th, 1950.

Mr. Law: I will now offer in evidence General Counsel's Exhibit 3 for Identification, that is the master agreement proposed contract.

Trial Examiner Miller: Is there any objection?

Mr. Fudge: Well, I am inclined to think that the whole thing is incompetent, irrelevant and immaterial in view of Mr. Gamble's testimony to the effect—well, the effect of it is up to you; I object to it on that basis, that it is incompetent, irrelevant and immaterial, at this stage.

Trial Examiner Miller: Objection overruled. General Counsel's Exhibit 3 will be received.

(The document referred to as General Counsel's Exhibit No. 3 for Identification was received in evidence.)

(Testimony of Cecil F. Gamble.)

GENERAL COUNSEL'S EXHIBIT No. 3

Master Agreement Between

.....
and

The American Federation of Grain Millers
(A. F. of L.), Local Union Number
Relating to the Company's Plant at

.....
Effective from, 19..., to, 19...

Preamble

1. Parties

The parties to this agreement are the Company,, and the Union, American Federation of Grain Millers (AFL), including the International Union and each of its Local Unions whose name and number appears as one of the signatories.

2. Nature of the Agreement

This Master Agreement and the Supplemental Agreement to be negotiated, as provided in paragraph 8, shall be considered the collective bargaining agreement between the parties for such bargaining unit. The terms and conditions of the Supplemental Agreement shall be binding on the parties thereto regardless of the continuation or termination of this master agreement, and the

(Testimony of Cecil F. Gamble.)

terms and conditions of this Master Agreement shall be binding on the parties regardless of the continuation or termination of any Supplemental Agreement.

3. This contract represents the agreement reached between the parties as a result of having collectively bargained in respect to rates of pay, wages, hours of employment, and other conditions of employment, and its purpose is to promote and insure harmonious relations and understanding between the Company and its employees. To that end the Company pledges itself to give its employees considerate and courteous treatment, and the employees, in turn, pledge themselves to render the Company loyal, efficient, and cooperative service.
4. In consideration of these premises and the mutual promises of the respective parties herein contained, the parties hereto mutually covenant and agree to and with each other as follows:

Section I. Recognition

5. The Company recognizes the Union as the sole collective bargaining agent for its employees in those of the Company's plants or other appropriate collective bargaining units wherein a majority of its employees have designated the Union as their bargaining representative for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment, or

(Testimony of Cecil F. Gamble.)

other conditions of employment; provided, however, that this recognition shall not apply to employees in other recognized bargaining units or to employees whose duties and responsibilities classify them as supervisors, buyers, salesmen, and employees taking the Company's regular training course for supervisory service, provided, however, that trainees doing work to learn a job shall in no way displace or otherwise disturb the status of a regular employee who would normally work the job.

6. The Union agrees with the Company that this agreement shall apply to the Plant(s) or other appropriate bargaining units shown hereon, or as the same may be amended or extended by the parties hereto.
7. All employees covered by this agreement who have completed their probationary period shall, as a condition of employment, become and remain members of the Union in good standing for the life of this agreement.

Admitted January 30, 1951.

Mr. Law: I might state that General Counsel's Exhibit 3 is [48] offered primarily for the purpose of establishing a part of the request to bargain. And as I attempted to make clear, there was no claim that Mr. Zall ever agreed to the contract.

Mr. Fudge: I appreciate that, Mr. Law; with-

(Testimony of Cecil F. Gamble.)

out me judging the case myself, I would say that at this stage it is incompetent, irrelevant and immaterial.

Trial Examiner Miller: Well, my ruling on that stands.

Mr. Law: All right.

Trial Examiner Miller: Well——

Mr. Fudge: I waive my remarks on the subject, but not my objection, of course.

Trial Examiner Miller: Well, the record is clear, and if I have not expressed my ruling at this point, I would say that General Counsel's 3 would be accepted in evidence.

Mr. Law: I will now offer General Counsel's Exhibit 4 in evidence. That is the authorization application for membership cards signed by Jess Stovall.

Mr. Fudge: I make the same objection.

Trial Examiner Miller: Overruled.

General Counsel's No. 4 will be received.

(Whereupon the document heretofore referred to as General Counsel's Exhibit No. 4 for Identification was received in evidence.)

GENERAL COUNSEL'S EXHIBIT No. 4

Application Date: September 12, 1950.

Authorization and Application for Membership

I, the undersigned, an employee of Sam Zall Milling Company, hereby make application and

(Testimony of Cecil F. Gamble.)

authorize the American Federation of Grain Millers (A. F. of L.), or its affiliated Local Union No. (Pending), its officers or representatives to represent me from the date herein set forth in the matter of Collective Bargaining with respect to hours of labor, wages, tenure of employment, and other terms and conditions of employment as provided by the National Labor Relations Act.

Name: Jess Stovall.

Address: P. O. 1625.

City: Yuba City.

Telephone No.: 33113.

State: Calif.

Amount of Initiation Fee: \$5.00.

Date Initiated:

/s/ JESS STOVALL.

Signature of Applicant.

/s/ C. F. GAMBLE,

Signature of Union
Representative.

Admitted January 30, 1951.

Mr. Law: I will offer General Counsel's Exhibit 5, sub parts a to d, inclusive, sub part a being the authorization [49] application for membership card signed by Charles H. Adams; sub part b being the

(Testimony of Cecil F. Gamble.)

similar card for Otis Matthews; sub part c being the similar card for Ernest C. Curt; sub part d being the similar card for R. C. Skinner. I now offer General Counsel's Exhibit 5 and sub parts mentioned in evidence.

Mr. Fudige: Subject to the same objection.

Trial Examiner Miller: For the record, that objection is overruled. General Counsel's Exhibit 5, sub parts a to d, will be received in evidence.

(Whereupon the documents heretofore referred to as General Counsel's Exhibit 5, a to d, for Identification, were received in evidence.)

GENERAL COUNSEL'S EXHIBIT No. 5-A

Application Date: October 2, 1950.

Authorization and Application for Membership

I, the undersigned, an employee of Sam Zall Milling Company, hereby make application and authorize the American Federation of Grain Millers (A. F. of L.), or its affiliated Local Union No. (Pending), its officers or representatives to represent me from the date herein set forth in the matter of Collective Bargaining with respect to hours of labor, wages, tenure of employment, and other terms and conditions of employment as provided by the National Labor Relations Act.

(Testimony of Cecil F. Gamble.)

Name: Charles H. Adams.

Address: Gen. Del., Sutter City.

City: Sutter City.

Telephone No.:

State: California.

Amount of Initiation Fe:

Date Initiated:

/s/ **CHARLES H. ADAMS.**

Signature of Applicant.

/s/ **C. F. GAMBLE.**

Signature of Union
Representative.

Admitted January 30, 1951.

GENERAL COUNSEL'S EXHIBIT No. 5-B

Application Date: October 2, 1950.

Authorization and Application for Membership

I, the undersigned, an employee of Sam Zall Milling Company, hereby make application and authorize the American Federation of Grain Millers (A. F. of L.), or its affiliated Local Union No. (Pending), its officers or representatives to represent me from the date herein set forth in the matter of Collective Bargaining with respect to hours of labor, wages, tenure of employment, and other

(Testimony of Cecil F. Gamble.)

terms and conditions of employment as provided by the National Labor Relations Act.

Name: Otis A. Matthews.

Address: P. O. Box 463.

City: Olivehurst.

Telephone No. 37067.

State: California.

Amount of Initiation Fe:

Date Initiated:

/s/ OTIS MATTHEWS.

Signature of Applicant.

/s/ JOHN R. HANIFIN.

Signature of Union
Representative.

Admitted January 30, 1951.

GENERAL COUNSEL'S EXHIBIT No. 5-C

Application Date: October 2, 1950.

Authorization and
Application for Membership

I, the undersigned, an employee of Sam Zall Milling Company, hereby make application and authorize the American Federation of Grain Millers (A. F. of L.), or its affiliated Local Union No. (Pending), its officers or representatives to represent me from the date herein set forth in the matter of Collective Bargaining with respect to hours of

(Testimony of Cecil F. Gamble.)

labor, wages, tenure of employment, and other terms and conditions of employment as provided by the National Labor Relations Act.

Name: Earnest C. Curt.

Address: 296 Woodbridge Av.

City: Yuba City.

Telephone No. None.

State: California.

Amount of Initiation Fee:

Date Initiated:

/s/ **EARNEST C. CURT.**

Signature of Applicant.

/s/ **C. F. GAMBLE.**

Signature of Union
Representative.

Admitted January 30, 1951.

GENERAL COUNSEL'S EXHIBIT No. 5-D

Application Date: October 2, 1950.

**Authorization and
Application for Membership**

I, the undersigned, an employee of Sam Zall Milling Company, hereby make application and authorize the American Federation of Grain Millers (A. F. of L.), or its affiliated Local Union No. (Pending), its officers or representatives to represent me from the date herein set forth in the matter

(Testimony of Cecil F. Gamble.)

of Collective Bargaining with respect to hours of labor, wages, tenure of employment, and other terms and conditions of employment as provided by the National Labor Relations Act.

Name: R. C. Skinner.

Address: 409 4th St.

City: Marysville.

Telephone No.:

State: California.

Amount of Initiation Fee:

Date Initiated:

/s/ R. C. SKINNER.

Signature of Applicant.

/s/ C. F. GAMBLE.

Signature of Union
Representative.

Admitted January 30, 1951.

Trial Examiner Miller: What arrangements are going to be made with regard to production of duplicates?

Mr. Law: I intend to prepare copies. Mr. Examiner has given me blank forms. The copies in this case are not yet prepared. I would like to do that during the noon recess. I will attempt to supply Mr. Fudge with copies.

Trial Examiner Miller: I would like to have our duplicate file complete, and if it isn't too difficult

(Testimony of Cecil F. Gamble.)

for Mr. Law, I would appreciate it if he could do it during the noon hour.

Mr. Law: I have no further questions of Mr. Gamble.

Trial Examiner Miller: At this time we will recess for the noon hour. I think we will go off the record for a moment to discuss the amount of time that would be appropriate for the [50] purpose.

(Discussion off the record.)

Trial Examiner Miller: On the record.

Very well, at this time we will recess the hearing until 1:45.

(Whereupon, a recess was taken until 1:45 p.m.) [51]

(Whereupon the hearing was resumed, pursuant to the taking of the recess, at 1:45 p.m.)

Trial Examiner Miller: The hearing will be in order.

Had you completed your direct examination, Mr. Law?

Mr. Law: Yes, I had.

Trial Examiner Miller: Before we proceed to cross-examination, I will ask that we clear up the matter of duplicates in the General Counsel's exhibits. Four and five, a to d, which I see you are about ready to offer.

Mr. Law: Yes. I now have duplicates prepared

(Testimony of Cecil F. Gamble.)

and will present them and a set of copies for Mr. Fuidge.

Trial Examiner Miller: Very well. The record shows that the duplicates of General Counsel's 4 and 5, a to d, inclusive, have been received in evidence.

Mr. Law: I have no further questions of Mr. Gamble.

Cross-Examination

By Mr. Fuidge:

Q. Mr. Gamble, I take it for granted that your union has complied with the regulations and rules concerning filing non cumulus affidavits and so on.

Now, when you and Mr. Hanifin were engaged—were in this project together, were you?

A. Yes.

Q. Were you in the—together at all times in the various visits? [52]

A. Most major points on signing of the affidavits, the authorization cards, yes. There might have been one or two times that Mr. Hanifin just went by to visit or to say hello or something like that. The official business was done in the presence of Mr. Hanifin.

Q. This was, I take it, your promotion?

A. It was the international promotion.

Q. I mean, you were in charge of it?

A. We were appointed at the same time and Mr. Hanifin was appointed due to my recommendation.

Q. As an assistant to you?

A. That is right.

(Testimony of Cecil F. Gamble.)

Q. Now, when you first went into the plant, which would be sometime around the 26th of September, Mr. Hanifin was with you at that time, was he? A. Yes, sir.

Q. Did you make yourselves known at the office?

A. First place was the office.

Q. And did you contact Mr. Zall at that time?

A. That's right.

Q. And you told him that you were attempting to organize the men? A. That's right.

Q. And did you inform him that you intended to contact them on the premises? [53]

A. No.

Q. At any time did you see Mr. Zall in and about the premises when you were engaged in your organizational work? A. No.

Q. And do you know whether or not Mr. Zall knew that you were engaged in your business at any time prior to September 26th of 1950?

A. I have a general knowledge of it.

Q. What do you base that statement on?

A. From the report—you are speaking of after the first meeting, is that what you have reference to?

Q. Let me see if I have my dates correct. I understood your testimony to be that you had seen Mr. Zall around the 26th of September for the first time, is—in the plant, the office of the plant of his company with Mr. Hanifin? A. Right.

Q. Now, prior to that time had you been on the premises in contact with any of the men?

(Testimony of Cecil F. Gamble.)

A. One, just as an invitation to be present at the hotel.

Q. That was to Mr. Stovall, wasn't it?

A. Right.

Q. And Stovall came down to the hotel on the, I think you testified the 18th of September and that is when you signed him up? A. Right. [54]

Q. The charge actually bears the date of December 12, 1950?

A. It could have been the 12th.

Q. That would refresh your recollection?

A. It could have been the 12th, my mind is not—I was strictly going by memory at the time. I have the record here in my file but I do not have the exact date. Whatever the card says is the date we signed him up.

Q. And you met Stovall first at the plant, in the plant, is that correct? A. Right.

Q. You and Mr. Hanifin together?

A. Right.

Q. And talked to him about this proposition?

A. No, we invited him.

Q. Did you tell him who you were?

A. Right.

Q. And did you tell him what you had in mind?

A. Not at that time, he knew.

Q. How did he know?

A. He evidently received some information from some of the boys at the General Mills plant.

Q. You had had a contact then with Stovall before? A. I did not, no.

Q. Who did?

(Testimony of Cecil F. Gamble.)

A. The boys in the General Mills plant were contacted, you [55] might say to get familiar with an idea of what was taking place under the jurisdiction of it.

Q. General Mills, as I take it, has a contract with your organization?

A. General Mills at Marysville has a contract with the Teamsters. That is, the local I do not know.

Q. I see. And through friendship or otherwise with some member of the Teamsters, Stovall was approached at your request—on your behalf with reference to an organization program, is that right?

A. Stovall was recommended to us to contact as the most reliable source to start our organizing campaign.

Q. In Zall's plant too, the recommendation came from one of the men from the General Mills plant?

A. Right.

Q. Here in Marysville?

A. In Marysville.

Q. So when you walked into the plant, you introduced yourself and Mr. Stovall—yourself and Mr. Hanifan to Mr. Stovall, told him who you were and suggested that he meet with you at the Marysville Hotel that evening? A. Right.

Q. This was during business hours, was it?

A. Right.

Q. Now, what time of day was it that you met Stovall at the [56] plant?

(Testimony of Cecil F. Gamble.)

A. If my memory serves me right, it was in the afternoon around 3:00 o'clock. I just have no definite—I could not swear to it one way or the other.

Q. And what time was it when you met him at the hotel?

A. Around 8:00 o'clock in the evening.

Q. And what was the subject of the conversation at that time? A. Collective bargaining.

Q. I beg your pardon?

A. Collective bargaining, and signing of the authorization cards.

Q. Collective bargaining. You are indicating to me by that that you talked to Stovall with reference to the possibility of organizing the Sam Zall Milling Co., right? A. Right.

Q. Insofar as any collective bargaining is concerned, there had been no approach to Sam Zall at that time, had there?

A. Not at that particular time.

Q. Now, how long were you with Mr. Stovall that evening?

A. If my memory serves me right it was around—we went to the show, he came up around—I think we met him in the lobby about a quarter to eight. We went up to the room in the Marysville Hotel and we stayed there until approximately 9:00 or 9:30.

Q. Did you have anything to drink?

A. We had a little refreshment, yes. [57]

Q. Alcoholic in nature?

A. I can't prove that.

(Testimony of Cecil F. Gamble.)

Q. Don't you remember?

A. No, I don't. I was not intoxicated.

Q. I didn't say that, I am not indicating it.

A. Well, that is for the record.

Q. I am asking you whether or not you had something alcoholic to drink.

A. I have no proof—stated that there was a certain percentage of alcohol in the drink, yes.

Q. Whiskey? A. No.

Q. Gin? A. Wait a minute, may I—

Q. Just a minute, I am asking you a question.

A. All right, it was whiskey.

Q. And Stovall had some too, did he?

A. That's right.

Q. Did he impress you as being a good drinking man? A. Very sociable.

Q. Did you make it clear to Mr. Stovall that this particular time, what you had in mind when you offered him this card for his signature was that he was making an application for membership in this Union? A. Right, an authorization to. [58]

Q. And that he was also authorizing your Union to bargain on his behalf? A. Right.

Q. Was there anything said about an election at that meeting?

A. We discussed the procedure of the Board. Not to my knowledge. Of the procedure of elections as far as the National Labor Relations Board was concerned.

Q. Let me ask you, was there anything said that the fact of his signature to this card was that there

(Testimony of Cecil F. Gamble.)

should be an election held as to whether or not your organization or some other organization would represent the employees?

A. Definitely so. That is the procedure of our organization, and it is the purpose of our Recognition Card, is to gain their signature for their God-given right to authorize us to petition for an election in the courts of the law.

Q. Now, tell me what you told him about that?

A. I told him that that would be the procedure.

Q. That there would be—

A. We had to have the cards. We had to have their signatures.

Q. For an election? A. For an election.

Q. I see.

Then about the twenty-sixth of September, you went in to see Mr. Zall and with Mr. Hanifin and you told him who you were, and at that time you offered him in your words, for his [59] "study and approval," this master agreement, Government's Exhibit No. 3. Did you not?

A. I presented him with that contract for the purposes of collective bargaining.

Q. Now, did you tell him that this was for his approval? A. That's right.

Q. Indicating by that that it was to be accepted if its form and if no other matter—

A. It was to be negotiated, to use my words, "We will discuss his financial status in accordance to the Master Agreement."

(Testimony of Cecil F. Gamble.)

Q. Now, explain that to me?

A. In some of our agreements, holidays are considered as a cost item which we know.

Retroactive pay is considered in a good many cases as a cost item.

And vacations are considered as a cost item.

The call-in time is considered as a cost item. And that is what I meant.

Q. Where does that tie in with his financial standing. Tie that in with this agreement?

A. Wages are not necessarily a bargaining item. They are in a sense. But you have other conditions that must be applied to the cost of an operation.

Q. Do you take into consideration whether the employer is not, is able to go into that sort of a proposition? [60] A. That's what I meant.

Q. You have straightened me out on that all right.

And at the time, this particular date of October 26, 1950, you then had only Mr. Stovall signed up? That is correct, is it not?

A. At our first—signature was Mr. Stovall, yes.

Q. That is the one—

A. That we signed in the hotel?

Q. Yes.

A. And as for the date. I don't remember the date.

Q. Thank you. We will take a look at the card; if there is any question.

A. Well, there is no objection.

Q. And I think you told Mr. Law that when

(Testimony of Cecil F. Gamble.)

Government's Exhibit No. 3 was presented to him on that day, the blanks were not completed.

For it says, "This Agreement shall become effective when the (blank) day of 19 (blank), shall be operative, and shall remain in force, until the first day of (blank), 19 (blank)."

Those blanks were blank, were they not?

A. They were blank in the contract.

But why did I ask the question of the study and approval?

Q. I am asking the questions, Mr. Gamble?

Your answer to my question was that these blanks, as they appear in Government's Exhibit No. 3 were not completed when [61] you handed him the contract for his study and approval on September 26, 1950?

A. That's right.

Q. And on that day, there was no refusal of any kind by Mr. Zall to undertake the consideration of the agreement you handed him?

A. He said that he did not need a labor organization in his plant, nor neither did his men. And I determined that that was a refusal to bargain.

Q. On September 26, 1950?

A. He made that statement, yes.

Q. I understood your testimony to be that the blanks shown in the contract were blank. That you did not go into any discussion. That Mr. Zall said **he would study it, and for you to drop back in a week or so, and if he liked it, he would make an appointment with you at that time, and that was all.**

(Testimony of Cecil F. Gamble.)

Now, is that the way the conversation went on the twenty-sixth?

A. He made the statement that he did not need an organization at the first meeting.

He made the statement that he did not need a labor organization or a union in his plant, and neither did his employees.

And, he reaffirmed his position at our second meeting.

Q. Well, do you remember on your direct examination this morning that you gave the testimony that I just reported to [62] you?

A. That's right.

Q. All right.

And do you remember that when you said that that was all, that Mr. Law then asked you another question as to whether or not you had anybody signed up, you said you had one man, Stovall, and you had a recognition card from him. That you had not contacted the other employees. And that that was the sum and substance of your conversation with Mr. Zall on the twenty-sixth?

A. Mr. Zall did not know anything about the authorization card that I had signed from Mr. Stovall.

Q. I didn't ask you that Mr. Gamble.

I asked you, or, what I am asking you again. In addition to these things that you testified to this morning on direct examination. Now, do you now tell us that on September 26th, in addition to those things that Mr. Zall said he did not want a Union or any—

(Testimony of Cecil F. Gamble.)

A. That's right. That was on the first visit.

Q. That was on the first visit?

A. That's right.

Q. What was your testimony this morning directed to when you said he said he would study it and to drop back in a week or so and that he would talk to you about it, and give you an [63] appointment?

Mr. Law: Well, if I may object there.

I object that it is argumentative.

I asked the witness what was said. It seems to me now the inquiry is going into his reasons.

Mr. Fudge: I submit that it is cross-examination, and Mr. Gamble is now giving us an additional element as to this conversation which I didn't hear about on direct examination.

Trial Examiner Miller: Well, off the record.

(Discussion off the record.)

Trial Examiner Miller: On the record.

I will overrule the objection.

Q. (By Mr. Fudge): Was your statement before us this afternoon, Mr. Gamble that Mr. Zall on the twenty-sixth of October, tell you that he didn't need a union, and didn't want it, or words to that effect.

What did you have in mind when you said this morning in your direct examination that when you presented the contract to Mr. Zall, he told you that he would study it, and to drop back in a week or so, and if he liked the agreement, he would make an

(Testimony of Cecil F. Gamble.)

appointment with you at that time to discuss it?

A. If I am not too far out of my thought, I think I stated in the first opening remarks this morning that our first meeting with Mr. Zall. That he included in his statement or, I included in his statement that he had no need of a union, or, it may not be just exactly that wording, or his employees did not need a [64] union in that establishment.

Q. You did say something like that. You said that Mr. Zall said that the plant was like a family?

A. Right.

Q. And when he had troubles, he went out and adjusted it. He said, "I don't want a union. My people don't need a union."

However, what I am asking, is this: With reference to your testimony this morning, that you were to drop back in a couple of weeks, you didn't consider this meeting of October the 26th as an end of everything, or a refusal to bargain, did you?

A. If Mr. Zall had not made the statement that he did make, I would have presented him with the contract, and we would have started our negotiations as soon as the date could have been set.

Q. I am sorry, that is not what I asked you.

The question I put to you was this, and you can give me a yes or no on it.

When you walked away from the plant on the twenty-sixth of October, 1950, you did not consider the negotiations were at an end, did you?

(Testimony of Cecil F. Gamble.)

A. Truthfully, I cannot say that I expected negotiations at that time.

Q. But you were intending to come back and try again? A. After his study and approval.

Q. All right.

Now, subsequently you tied up Adams, Mathews, Curt, and Skinner.

Were these men all contacted—

A. What do you mean by "tying them up"?

Q. Did you sign them up?

A. Sign them up.

Q. Sign them up.

And I take it again that these contracts were made at the plant?

A. We had three made at the plant as far as the signatures are concerned.

Q. You talked to all four men at the plant. On the floor of the plant. The plant premises.

A. One man had gone home. Mathews had gone home when we were in the plant at that time, we did not get to discuss it with him. We spoke to Chuck Adams, Earnest Curt, and Skinner.

Q. At the plant? A. At the plant.

Q. On the premises? A. Right.

Q. In working hours? A. That's right.

Q. And let's see. These men also met you at the hotel, did they not? A. Who? [66]

Q. Adams, Curt and Skinner?

A. Skinner has never been to the hotel. Curt has never been to the hotel. Adams has been to the hotel.

(Testimony of Cecil F. Gamble.)

Q. Well, now let me ask you a straight question.

When and where did you secure these membership cards from Adams, Curt and Skinner and Mathews?

A. The first three that you mentioned—

Q. Adams, Curt and Skinner.

A. ——were on the premises of Sam Zall's mill.

Q. During working hours?

A. During working hours.

Now, what was the next one?

Q. Mathews.

A. Mathews was at our room in the hotel. Mathews was on the same day, October 2nd.

Q. Then the next day, you and Mr. Hanifin went back out to the plant and met Sam Zall outside of the office. That is, inside the premises, but outside the office?

A. Just outside the door of his office, as near as my recollection—

Q. And he walked out on the sidewalk?

A. That's right.

Q. And at that time he asked you who you had signed up—right?

A. He asked me if I had thirty per cent.

Q. Did he ask you for the names of the [67] men?

A. He said, "Let me see them." The cards, that's what he meant.

Q. Did he ask you for the names of the men that you had signed up?

(Testimony of Cecil F. Gamble.)

A. He did not ask me for the names, he asked me to see the cards that I had signed up.

Q. And you refused to show them?

A. I did not refuse. I said, "Oh, no, that is for the jurisdiction of the Board," or words to that effect, and if they so desire, that is another matter.

Q. Well, don't you ordinarily show an employer that you are attempting to organize your authority to deal with them?

A. That goes into a history of several cases.

Ordinarily, no.

Q. Ordinarily, no? A. Right.

Q. Then the employer is required to take your authority on faith, you might say?

A. We—

Mr. Law: I object to the question.

Mr. Fudge: Withdraw it.

Q. (By Mr. Fudge): You go to a man and tell him that you are representing his employees and that you are prepared to bargain with him on their behalf, and you do not show them your authority by way of these authorization sign-up cards [68] before you deal with him, is that right?

A. We generally write a communication to the employer, in this case it was not so, stating the fact that we represented a majority of their employees, and requesting a meeting for the purpose of collective bargaining, and, at their earliest convenience, that a meeting will be set for a discussion of this particular bargaining discussion.

(Testimony of Cecil F. Gamble.)

We in turn receive, or do not receive a letter of recognition of our petition to the employer.

It is customary with our International to sign the cards and to refer them to the Board, and if the Board so sees fit to expose those cards, that is their prerogative.

Q. Well, I do not follow you.

Do you start these things in mind that you are going to have a hearing before the Labor Relations Board, and, never mind about negotiating with the client, I mean the employer?

A. That is one reason why I went to see Mr. Zall the second time. I asked him the question if he would recognize us if we had the thirty per cent. He said, "Have you got them?" and I said, "Yes," and he said, "Let me see them," I said, "Oh, no, the Board——" and we had already filed a petition with the Board.

Q. You had filed a petition with the Board?

A. No, that's a misstatement.

At the meeting, the second meeting, we had not filed with the Board, but on the fourth day of October we filed with the [69] Board.

I had the cards in my possession at that time, and it is customary to send the cards, the authorization cards with the application forms for an election.

Q. Well, let's you and I understand each other.

You had these cards in your pocket, or possession. In your briefcase, or in your office?

A. I did.

Q. And Zall asked you to take a look at them,

(Testimony of Cecil F. Gamble.)

and you said, "No." A. That's right.

Q. That's right? A. I had a reason for it.

Q. And you immediately went to the Board and filed a petition for an election? A. Right.

Q. And why did you do that?

A. Due to the fact of the unfair labor charges that we had so filed.

Q. You did not file that until—

A. That's why we withdrew our petition for an election.

Q. You didn't file that until the eigtheenth of October, did you?

A. Well, whatever the record says there. You have the date. I have it here in my file, but it's not customary to look at [70] my file during cross-examination.

The date kind of misses me.

Q. So, in any event, we can say that on October 3rd, the last time you talked to Mr. Zall you had come to the place where you had to go to the Board?

A. Yes.

Q. You mean the National Labor Relations Board? A. Yes.

Q. You had been there once before, had you not?

A. Right.

Q. Now, when you signed these men, Mathews, Adams, Curt and Skinner up, was there something said about an election being held, as between your organization and the employer, or any other organization for the purpose of representation?

A. That's right.

(Testimony of Cecil F. Gamble.)

Q. You did not tell these men that that's what this was for, did you, Mr. Gamble?

A. That's right.

Q. You did, or you did not? A. I did.

Q. You did tell them?

A. I told them that that's the recognition for purposes of obtaining an election. And also the membership cards.

Q. And you also indicated that you were getting them so that there could be an election? [71]

A. Right.

Mr. Fudge: I think that's all.

Redirect Examination

By Mr. Law:

Q. Did you tell the employees that the only reason for the cards was to obtain an election?

A. No. It was for an application for membership.

Mr. Law: No other questions.

Mr. Fudge: I have no further questions.

Trial Examiner Miller: You may be excused.

(Witness excused.)

Mr. Law: I will recall Mr. Zall as an adverse witness.

SAM ZALL

a witness called by General Counsel, having been previously sworn, resumed the stand, and was examined and testified further as follows:

Direct Examination

By Mr. Law:

Q. Mr. Zall, you have heard Mr. Gamble's testimony, have you? A. Yes.

Q. Did Mr. Gamble in fact see you on two different occasions? A. Yes.

Q. Once in September, and once in October?

A. Yes.

Q. All right. Now, after the second meeting with him in [72] October, did you have any conversations with any of the employees that is, exclusive of Mrs. Miles or Mr. Cotton or the salesman, Mr. Darchuk. Did you have any conversations with any of the other employees with respect to their activities or affiliations with the Union?

A. I don't believe I did.

Q. You had no conversations with the men at all?

A. Nothing specific. I may have had conversations with them, because I talk to them every day when I am around them.

Q. Well, did you not in fact—

A. I don't recall any definite conversation specifically about the Union.

Q. Well, did you go to a number of employees and ask them if it was true that they had signed cards for the Union?

(Testimony of Sam Zall.)

A. It's possible that I did after talking to Mr. Gamble and not knowing for sure whether he had them signed up or not.

I may have asked the various men if they had actually signed up.

Q. Well, you did ask them in fact, did you not?

A. Yes. I believe I did.

Q. Do you remember how many you asked?

A. No, I don't.

Q. Now did you thereafter have a meeting with your employees in the plant or with any of them to discuss entering into a contract directly between themselves and you covering wages and [73] hours?

A. No, I didn't.

Q. You say you didn't have such a meeting?

A. No.

Q. Were you present at any meeting while Mr. Cotton discussed the contract directly between yourself and your employees?

A. I was present at one conversation after the contract had been presented to me on my desk.

It was on my desk and Mr. Cotton was taking it up with the men, and I happened to be going through and talked about it, and I happened to be going through and stopped, and he asked me several questions, which I answered.

That was regardless of having this put on my desk, but I didn't call the meeting or have anything to do with calling it.

Q. I will show you again a document which I showed to you during the recess, and ask you if

(Testimony of Sam Zall.)

that is a copy of the contract which you ultimately did enter into with certain of your employees?

A. Yes.

Q. And when did you sign that contract? The original?

A. Oh, gee, I couldn't tell you that. But at the time it was drawn up, it was put on my desk signed by the men, and I signed it.

Q. Was it signed by the men before you signed it? A. As good as I can remember, it was.

Q. And which men signed it? [74]

A. Well, I've got the original copy here; I can tell you better that way, if I may look at it.

Jess Stovall, Earnest Curt, R. C. Skinner, Charles Adams and Otis Mathews.

Q. Those men signed on the right-hand side of the sheet, did they? A. That's right.

Q. And you signed where?

A. On the left. Lower left.

Trial Examiner Miller: May I have those names again, please?

The Witness: Jess Stovall, Earnest Curt, R. C. Skinner, Charles Adams, and Otis Mathews.

Mr. Fudge: If Mr. Law would like to complete his copy there with those names, I would more or less stipulate that it is a copy of the contract in question.

Mr. Law: I think that might be a good suggestion. We can do that in the next recess as to the names.

(Testimony of Sam Zall.)

Mr. Fudge: Mr. Law, would you like to examine the original?

Trial Examiner Miller: Let the record indicate that Mr. Law has inspected the original.

Q. (By Mr. Law): Now, from your recollection, Mr. Zall, how did this contract come to be executed?

What part did you have in its execution? [75]

A. I didn't have any part in the execution. As near as I can find out, the men had taken it up entirely with Mr. Cotton.

This particular contract—however, I might add that for at least three months we had been negotiating back and forth, the men and myself, and Mr. Cotton, toward a contract of this nature, either verbal or written. So, it wasn't something that was just brought up on the spur of the moment.

Q. Well, you did then have conversations with the employees about a contract of this nature before the execution of General Counsel's Exhibit No. 6 for identification?

Perhaps I haven't identified that on the record.

Trial Examiner Miller: You have not. No.

Let the record show, if it does not already show, that the document now under discussion by Counsel for the General Counsel that the witness has identified as General Counsel's Exhibit No. 6 for Identification.

(Thereupon, the above-mentioned document, General Counsel's Exhibit No. 6, was marked for identification.)

(Testimony of Sam Zall.)

Q. Did you have a conversation with the employees about a contract of this nature before the execution of General Counsel's Exhibit No. 6 for identification?

A. The only conversation I had were those conversations that had taken place prior to the time the Union Representatives had come on the scene, and those were mere generalities. [76]

Q. All right.

Now, with reference to General Counsel's Exhibit No. 6, for identification: Was that executed before or after your second meeting with Mr. Gamble and Mr. Hanifin?

A. I wouldn't want to say. I don't remember.

Q. Well, a few questions to complete the record with reference to the contract.

The opening sentence starts out: "Agrees to pay the same wages as General Mills."

To what General Mills does that refer?

A. General Mills in Marysville.

Q. And what is General Mills in Marysville?

A. General Mills is incorporated; it is a feed manufacturing establishment, owned by the General Mills, Incorporated.

Q. Now, did the execution of this agreement, that you pay the same wages as General Mills result in your giving an increase in the hourly rate to your employees as of October 2, 1950?

A. Yes. That was the point.

Q. And approximately, what was the amount of that hourly increase?

(Testimony of Sam Zall.)

A. I've forgotten. It seems to me that we had given a prior raise of two and a half cents. And this one was probably five cents, as I remember it.

Trial Examiner Miller: That would be five cents across the [77] board, as far as it—

The Witness: No. It seems to me—I believe that the grinder men got seven and a half cents more, and the mixer men got five cents more than the regular rate of pay.

Trial Examiner Miller: I beg your pardon.

The Witness: As his regular rate of pay.

Trial Examiner Miller: Do you know how much the other employees get?

The Witness: Than they had previously been receiving, you mean?

Trial Examiner Miller: Yes.

The Witness: As I say, I think we had previously given a two-and-a-half-cent raise, and that this was a five-cent increase. But I could stand corrected on that.

Trial Examiner Miller: Well, I don't know that the matter is material at this stage, but since it has been opened up, I might as well try to clarify it.

You spoke of the grinder men getting seven and a half cents.

The Witness: More than the regular employees. More than the regular—in other words, if one man got a dollar, grinder men got a dollar seven and a half.

Trial Examiner Miller: I see what you mean. You mean *that his* differential?

(Testimony of Sam Zall.)

The Witness: His differential was seven and a half cents.

Trial Examiner Miller: After this five-cent increase? [78]

The Witness: No. When the regular employees got a five per cent increase, the grinder men got a seven-and-a-half-cent increase.

Trial Examiner Miller: In other words, he would be the only one?

The Witness: The mixer man, I believe, got five cents. In other words, it was a dollar five, a dollar seven and a half cents.

Trial Examiner Miller: What about your take-off man, sack filler, and combination truck drivers and mill workers?

The Witness: Well, the men inside the mill, all got the same rate with the exception of these two classifications I have just told you about.

Truck men come under a different classification altogether, and they get a different rate. It's not covered on here but they—I believe they get six cents an hour more than the regular mill rate.

Trial Examiner Miller: Go ahead, Mr. Law.

The Witness: I might add that the truck drivers aren't included in this contract that I had with the men.

Mr. Law: Yes.

Trial Examiner Miller: My question was only because of the fact that you mentioned Skinner.

The Witness: Yes, but at that time, he wasn't a truck driver. [79]

(Testimony of Sam Zall.)

Q. (By Mr. Law): Now, I notice that further down in the contract the provision:

“At no time will an employee be cut off before his regular week is completed.”

Did that represent a change in prevailing practice with respect to termination of employees?

Mr. Fudge: What does “cut off mean”; fired?

The Witness: No.

Trial Examiner Miller: Will you explain what the term means then, and explain how, if at all, it varied from your previous practice?

The Witness: Well, as near as I can remember it, we worked on a forty-hour week from Monday to Friday, inclusive. And it was possible that when a man got his forty hours before Friday afternoon, he laid off when his forty hours were up, and in other words, he's cut off.

Trial Examiner Miller: That decision to lay him off, after he has put in forty hours, would be your decision, or Mr. Cotton's decision?

The Witness: Well, it was all of our decision. Because many times when the men worked for some reason or other wanted to work in the evening, and they would put in more hours than they should have for that particular day, and want to work in the evening, and they would put in more hours than they should have for that particular day, and by the end of the week they [80] would have had more than forty hours, if they had stayed until quitting time.

Trial Examiner Miller: What I meant was this.

(Testimony of Sam Zall.)

In the normal course of events, would the decision to cease work after putting in forty hours' work, be the decision made by the man, or made by the management?

The Witness: No, by the management.

The reason for that was that we tried to stagger all of the overtime to the point where every man got his fair share of overtime.

Q. (By Mr. Law): And did this contract represent any change in the situation which prevailed before execution of the contract?

A. Yes. There is a difference in the differential of the grinder man and the regular employees in the mill. A differential between the mixer man and the regular employees. A difference—

Trial Examiner Miller: Well, Mr. Law is speaking now with respect to the cut-off procedure.

The Witness: Oh, I see.

Trial Examiner Miller: That's the varying practice in the disposition in the contract with respect to cut-offs.

The Witness: Oh, yeah. That's varying the practice from the time we had the contract. It happened to be one of the things that we had talked about for three months, or several months. [81]

Q. (By Mr. Law): Now, there had also been previous discussions about the matter of calling in part-time employees, had there not?

Previous discussion between you and some of the employees? A. In what way?

Q. Did not some of the men ask that they be

(Testimony of Sam Zall.)

given overtime work if possible, rather than your calling in outside help?

A. That's one of the things they wanted in the contract.

According to Mr. Cotton, that is one of the things they had brought up all the time that the contract had been in negotiation, for two or three months.

Mr. Law: No other questions.

Mr. Fudge: That's all.

Trial Examiner Miller: That's all. You may be excused.

(Witness excused.)

Trial Examiner Miller: At this time, we will recess for five minutes.

(Short recess.)

Trial Examiner Miller: The hearing will be in order. Off the record.

(Discussion off the record.)

On the record.

Mr. Law: Before calling the next witness, I will offer General Counsel's Exhibit No. 6 for identification in evidence.

Trial Examiner Miller: Is there any [82] objection?

Mr. Fudge: No. Did I not stipulate that it was a true and correct copy? I believe so.

Trial Examiner Miller: Very well, General Counsel's Exhibit No. 6, pursuant to that stipulation will be received in evidence.

(The document heretofore marked General Counsel's Exhibit No. 6 for identification, was received in evidence.) [83]

(Copy)

GENERAL COUNSEL'S EXHIBIT No. 6
Contract between Sam Zall Milling Company and
Employees

Contract

Agrees to pay the same wages as General Mills, except for Grinder Man and Mixer Man, which would have a fixed price of 10c per hour over for Grinder Man and 05c per hour over for Mixer Man.

Agrees that when General Mills receive a pay increase that we, in turn, will receive an increase amounting to the same.

Agrees that, as far as possible, all work that can be turned to the regular employees, even though it involves overtime, be done.

Agrees, that, at no time, will an employee be cut off before his regular week is completed.

Agrees that after an employee has been employed for 30 days he is to receive the same base pay as the other employees.

Agrees that all men will do, to the best of their ability, according to the best practices in a Feed Mill and that the Grinder Man and the Mixer Man will be responsible for keeping their area in the cleanest possible condition. That all machinery,

under their control, will be kept up with respect to oiling, greasing and repairing.

This agreement will be in effect from October 2, 1950, to October 2, 1951, with an option of renewal at that time.

The following signatures are hereto fixed in a sincere, honest and truthful manner.

/s/ JESS STOVALL,

/s/ EARNEST C. CURT,

/s/ R. C. SKINNER,

/s/ CHARLES ADAMS,

/s/ OTIS MATHEWS,

/s/ SAM ZALL.

Admitted January 30, 1951.

Mr. Law: I will next call Otis A. Mathews.

OTIS A. MATHEWS

a witness called for and on behalf of General Counsel, after first being duly sworn, was examined, and testified as follows:

Direct Examination

By Mr. Law:

Q. What is your full name for the record?

A. Otis A. Mathews.

Q. And what is your address?

(Testimony of Otis A. Mathews.)

A. Third and Oliver—Third and Canal, in Oliver, California.

Q. Are you employed by the Sam Zall Milling Company? A. Yes, sir.

Q. How long have you been?

A. Oh, I don't know, about six—seven years next July.

Q. What is your present job?

A. Oh, I don't know. I have held a lot of them since I have been around there.

Q. What do you do most of the time?

A. I help Charley on the take-off mostly.

Q. Now, did you at any time have a conversation with Mr. Sam Zall with respect to the signing of a union card? A. Yes. I was—

Q. When was that conversation?

A. I think that was afterwards.

Q. After?

A. I don't remember the date now. It was a little while [97] after.

Q. After what?

A. After I signed the union card here.

Q. Now, when was the conversation?

A. While I was throwing off barley there.

Q. And was there anyone present beside yourself and Mr. Zall? A. No.

Q. All right. What did Mr. Zall say to you?

A. Well, he said, "Charley, did you join the Union or sign the card?" And I said, "Yes, sir, I did."

Q. Is that all of the conversation?

(Testimony of Otis A. Mathews.)

A. That's all I remember now.

Mr. Law: No more questions.

Cross-Examination

By Mr. Fuidge:

Q. Mr. Mathews, you signed the card with Mr. Hanifin, did you not?

A. Didn't I sign the card with you up there?

Q. This is Mr. Hanifin here, and Mr. Gamble here.

A. No, I didn't sign it when down at the mill.

Trial Examiner Miller: Let the witness indicate whether his memory has been refreshed.

(Witness' memory refreshed.)

The Witness: I didn't sign it at the mill; I went up there.

Q. (By Mr. Fuidge): At the hotel? [98]

A. Yes, at the hotel.

Q. Were Mr. Gamble and Mr. Hannifer in the room at the time, or was it Mr. Hannifer?

A. I think he was up there.

Q. Did you remember seeing Mr. Gamble?

A. Yes.

Q. This card that you signed Government's Exhibit No. 5(d)—

A. I didn't read it. My wife did.

Q. Well, this is your signature down here, is it not? A. It is my signature.

Q. Do you read? A. Yes, I can read.

Q. But your wife read this card to you?

(Testimony of Otis A. Mathews.)

A. Well, we read the whole works. We read all of them.

Q. What do you mean, you read all of what?

A. All of those cards that were signed up there.

Q. And when you signed this card, they had some other cards, is that what you mean?

A. Well, I seen that first. I wanted to see that first.

Q. You wanted to see who had signed before you signed? A. Yes.

Q. And there were some other cards there, and you saw the men's names on them? A. Yes

Q. So then you signed this card?

A. That's right.

Q. And Mrs. Mathews read this card to you?

A. She read all of them.

Q. She read them all? A. Yes.

Q. And did she read this to you?

A. Yes—well, them—who was on them. She didn't read that card, but she read the rest of them.

Q. Well, now, Mathews—

A. Well, one of those other cards.

Q. Now, are you saying this to me that when you went up to the room you wanted to see who else had signed up? A. Yes.

Q. So, either Mr. Gamble, or Mr. Hannifer handed you the cards and Mrs. Mathews went through them and looked at the names?

A. No, sir. They handed them to her. They gave her the cards to read and "That I want to see," is exactly the words I said.

(Testimony of Otis A. Mathews.)

Q. Well, what was Mrs. Mathews reading?

A. Well, I couldn't tell you now. I didn't remember.

Q. Was she reading them out loud?

A. Yes, sir.

Q. So she took them card by card and read each one? A. No. She just read the names.

Q. That is what I asked you. That is what I wanted to know. [100] A. That's right.

Q. She read the names off?

A. That's right.

Q. All right.

Now, then, neither Mr. Gamble nor Mr. Hannifer presented you with a card and you signed it?

A. That's right.

Q. Now, did Mrs. Mathews read that card?

A. No, she didn't read that card.

Q. Wait a minute. Let me ask you a question.

Did Mrs. Mathews read your card over to you before you signed it? A. No.

Q. All right.

Now, then, did Mr. Gamble or Mr. Hannifer read it over to you before you signed it?

A. No.

Q. What did you understand you were signing when you signed this card?

A. Well, just like Charley, I figured we was going to have to go into a vote to see which one was going to win out.

Q. Which one of what?

A. Which Union, or the other one?

(Testimony of Otis A. Mathews.)

Q. Of what you said there was going to be a vote. Who said that? [101]

A. I am a little ahead on my vote there.

Q. All right. Get back of your vote there.

Do this for me, Mr. Mathews, take your time. You are amongst friends.

Tell me and tell the Examiner, what was said to you my either Mr. Gamble or Mr. Hannifer as to what it meant when you signed that card?

A. We had been talking about the Union down there for quite a while. It wasn't much said about what we belonged to. Because I knew that the application would be an application for the Union. But there wasn't much said about what was signed. But what I was signing I knew it was an application for the organization membership of this here Union.

Q. All right. Then when you signed this, you understood that you were applying for membership in the Union, is that right? A. That's right.

Q. And what followed from that was that there was to be an election. Was that your understanding? A. That's right.

Q. And if the Union had not succeeded in an election, what about your membership in that Union?

A. Well, I couldn't speak of that.

Q. You didn't think it out that far?

A. No. [102]

* * *

EARNEST CURT

a witness called for and on behalf of General Counsel, after being duly sworn, was examined, and testified as follows:

Direct Examination

By Mr. Law:

Q. What is your full name for the record, Mr. Curt?

A. Earnest Claude Curt. I spell that Earnest a little peculiar. E-a-r-n-e-s-t.

Mr. Law: I noticed that.

A. C-u-r-t.

Q. What is your address?

A. 296 Woodbridge Avenue, Yuba City.

Q. Are you employed by the Sam Zall Milling Company? A. Yes, sir. [103]

Q. How long have you worked for it?

A. About two and a half years.

Q. What is your job?

A. I'm the mixer man.

Q. Now, did you at any time have a conversation with Mr. Sam Zall about whether or not you had signed a union card?

A. How was that?

Q. Did you at any time ever have a conversation with Mr. Sam Zall about whether or not you had signed a union card? A. Yes, sir.

Q. When was that conversation?

A. Well, it was along about the third or fourth of October.

Q. Of what year? A. Of 1950.

(Testimony of Ernest Curt.)

Q. And where was the conversation?

A. Standing right close to the tracks there by the molasses tank.

Q. In the plant? A. In the plant.

Q. Was anyone else present? A. No, sir.

Q. What was the conversation that you had with Mr. Zall?

A. He asked me if I had signed a card with the Union. I first denied it, because it was my own —none of the other boys said they had signed it, so I went and told him that I had. [104]

Q. I was asking only about the conversation on that first occasion.

A. He just merely asked me if I had signed the card.

Q. And you told him at that time?

A. And I told him at that time that I hadn't.

Q. And was that all the conversation?

A. Yes.

Q. Now, later as I understand it, you went to him again and told him that you had signed it?

A. Yes, sir.

Q. When was the second time?

A. Oh, maybe twenty minutes later.

Q. What was your conversation with him on the second occasion? Twenty minutes later.

A. I went back to him and I told him that I had signed a contract. I had been told that he had said that if any man joined the Union——

Mr. Fudge: Just a minute. Can we have some foundation? This is hearsay, I think.

(Testimony of Earnest Curt.)

Q. (By Mr. Law): I am not interested in what you had been told before.

A. O.K. That ends it, then. I told him I had signed the card.

Q. What did he say, if anything?

A. I don't know if I can exactly remember what he said.

Q. I will show you a contract that has been received in [105] evidence as General Counsel's Exhibit No. 6, and I will ask you if you signed that?

A. Yes, sir. That's my signature.

Q. Yours is the second one?

A. Second one from the top.

Q. Do you remember when you signed it?

A. Not exactly. It was in the latter part of that week. The week beginning October 2. Along Thursday or Friday. I couldn't say for sure.

Q. Were any other people present when you signed it? A. When I signed it?

Q. Yes.

A. Yes. There was three or four of us boys all standing there together, and we took turns about signing it.

Q. Now, before you signed it, did you have any conversation with Mr. Zall about the proposed contract?

A. He brought the other contract back. The one that Cotton had just sketched out, and read it to us.

Q. What had Mr. Cotton read?

A. Pardon?

(Testimony of Earnest Curt.)

Q. When had Mr. Cotton done this?

A. Oh, he had been working on it off and on all week. Just sketching it up, what he thought the boys wanted. And then when Mr. Zall come back, he brought the contract back and took it back to Mrs. Miles. I suppose for Mrs. Miles to copy after [106] he had read the contract to us and we had agreed that that was what we wanted.

Q. Who read it to you?

A. Mr. Zall read the contract.

Q. Do you remember whether Mr. Zall signed it before you did?

A. His signature was on it when the contract was brought back to us to sign.

Q. All right. Now, on that occasion did Mr. Zall and you or the other employees discuss the terms of the contract?

A. The terms of the contract?

Q. Yes.

A. You mean the length of the contract?

Q. No. I mean the provisions of the contract.

A. Yes, we talked about it there when he brought the contract back, and what our wages would be and this, that and the other and we all agreed that that was the way we wanted it.

Trial Examiner Miller: When you say, "We talked about it when he brought it back," are you referring to the time when he brought it out in the rough draft form, or when he brought it back in typewritten form with this signature?

(Testimony of Ernest Curt.)

The Witness: When he brought it back in the contract form, brought us.

Trial Examiner Miller: Before he took it away for typing?

The Witness: Yes.

Q. (By Mr. Law): Now, at the time you discussed the contract [107] with Mr. Zall, was anything said about an election?

A. I think at the time he said, "Now, boys, when the election comes, you know how I would like to have you vote."

Q. When was that?

A. That was while we were discussing the contract. He says, "If you sign this contract," he says, "then you boys know how I would like to have you vote."

Q. Did you or any of the others make any reply to him in that matter?

A. Not that I know of.

Mr. Law: No other questions.

Cross-Examination

By Mr. Fuidge:

Q. Mr. Curt, during the period of a few months before Mr. Gamble and Mr. Hanifin appeared upon the scene, had there been some talk about an increase for the men? Hadn't there?

A. An increase in the men?

Q. An increase of wages.

A. No, not between Mr. Zall and us. However,

(Testimony of Earnest Curt.)

sometime back a while before the contract was brought in, he did increase our wages two and a half cents an hour and to my knowledge there wasn't anybody ever asked him for the increase. I know I didn't.

Q. This was before you signed the card with Mr. Gamble and before you signed this [108] contract?

A. I think it was, yes, sir.

Q. You got that two-and-a-half-cent increase?

A. Two-and-a-half-cent increase.

Q. And before you got the two-and-a-half-cent increase, isn't it a fact that there had been some talk among the men about giving the pay scale to General Mills, and you fellows had been talking to Cotton about that?

A. As to that I can't say. I do know that the men all talked at different times about the wages General Mills gets and the wages we get. It quite often occurs that we all talk about that, but as far as to Cotton even discussing it, I don't know that he ever has.

Q. You've been there a couple of years, haven't you?

A. Yes, sir, with the exception of about 3 months last winter.

Q. And the other men have pretty steady employment records, too, don't they?

A. Yes, sir.

Q. What do you have? Seven, eight, nine men out there?

(Testimony of Earnest Curt.)

A. Oh, there's about six of us, I think, back in the mill.

Q. And you are all good friends amongst yourselves and with Cotton and with Mr. Gamble and Mr. Hanifin?

A. Yes, sir; as far as I know.

Q. And you men out there in the shops are talking about your jobs and how the business is run and the wages you get and the wages everybody else gets? [109]

A. That's the truth. I think you'll find that among any bunch of men.

Q. That's right. Now, as I understand the situation as you tell us, the thing finally came to a head and you had a talk with Cotton about what you'd like to have by way of wages.

A. Yes, sir.

Q. And then Cotton made himself some notes of some kind?

A. He would just make notes here and there and yonder as he had talked to the boys, 'til he finally—

Q. Finally got a—

A. Stumbled onto a plan he thought would work.

Q. Whipped it up into shape and talked it over with you boys out there in the shop, did he?

A. Well, if I remember right, we all talked about it out in the front one night after quitting time.

Q. All right; fair enough.

(Testimony of Ernest Curt.)

A. And he had told us what he was trying to get together and that he would see Mr. Zall and see what he thought about it.

Q. So he had it roughed out on some sort of a piece of paper? A. Yes, sir.

Q. And when Sam came out into the shop the same day you finally signed the contract, did it look as though that sheet of paper he had in his hand was the sheet that Cotton had fixed up?

A. Yes, it was the same sheet of paper. [110]

Q. And he went over the items with you and said, "Is this what you want?" A. Yes, sir.

Q. Then he went back into the office and then out comes the contract?

A. The contract came out.

Q. As it was in its final form?

A. As it is right there.

Q. And your recollection is that Sam's signature was on it when it came out?

A. Sam's signature was on it when I signed it.

Q. Who brought it out, do you know?

A. I couldn't say. Somebody brought it back there. I was busy working and I remember one of the boys said, "Here's this contract," and brought it back. Who brought it, I don't know. But I was busy at the time, and it was just about quitting time, and if I remember right, I was going over to shut the motors off at the time the contract was brought back there.

Q. Now, so far as the signing of the card is

(Testimony of Ernest Curt.)

concerned, I don't know whether Mr. Law showed you that or not, that little square card?

A. Yes, I've seen it.

Q. That shows the date of October 2nd. I presume that's the date you signed it. I think that was on Monday. A. On Monday. [111]

Q. Did you sign that at the mill?

A. At the mill, yes, sir.

* * *

Mr. Law: I am going to recall Mr. Gamble for a few questions.

CECIL F. GAMBLE

was recalled, and having been previously sworn, was examined and testified further as follows: [112]

Direct Examination

By Mr. Law:

Q. Mr. Gamble, have you been present through the hearing and heard all of the witnesses who testified so far? A. I have.

Q. As I understand it, you testified that you were present when each of the authorizations and applications for membership cards received here in evidence were signed by the employees?

A. That's right.

Q. Did you and Mr. Hanifin discuss the cards with the employees before they were signed?

A. We always read the title.

Q. Did you discuss them? A. Yes.

(Testimony of Cecil F. Gamble.)

Q. Did you say anything to the employees about what the cards were?

A. Applications for membership and authorization cards.

Q. Did you tell them that?

A. That's right.

Q. And did you tell them that in each instance?

A. Told it to them in the group in the plant and told it to them as individuals whenever we met them.

Mr. Law: No other questions.

Cross-Examination

By Mr. Fuidge:

Q. You didn't read the application to Curt [113] or to Mathews, did you?

A. I did not read the whole application card; I read the title. "Application for Membership and Authorization Card."

Q. And the thing that you were talking to the men about was that at this time it was the matter of an election, wasn't it?

A. Collective bargaining and an election.

Q. And that's what you had in mind when you talked to these men was to get an authorization and hold an election and see how you came out, that's right, isn't it?

A. Partially true, yes.

Q. Where is it untrue?

A. Because we also had an application for mem-

(Testimony of Cecil F. Gamble.)

bership if the election was successful, why, then, we would not have to go back and sign the application for membership.

Q. Did you tell them how much their dues would be?

A. At that time—I do not remember when Local 189 was established, but the dues of the Local was to be established by the Local.

Q. What's 189? Is that a local here?

A. That's a local of the American Federation of Grain Millers.

Q. In Marysville?

A. In Marysville, yes.

Q. When was it established?

A. May I ask Mr. Hanifin the date?

Q. Sure. [114]

Trial Examiner Miller: Mr. Hanifin?

Mr. Hanifin: I don't know the exact date; it was some time later than these dates we are discussing in October.

A. It was in the latter part of October, I would say, because there was an arrangement made for the delegation of this local to be present at the convention.

Q. (By Mr. Fudge): Well, did you discuss dues with these men? How much did you tell them it would be to join?

A. We didn't tell them anything because there had not been any dues set, and the dues would be strictly on a democratic basis.

Q. So that the only thing you would be talking to them about would be this election?

(Testimony of Cecil F. Gamble.)

wanted that so we could plan a local in Marysville.

Q. As a matter of fact, a couple of days afterwards, you filed a petition for an election?

A. Right.

Mr. Fuidge: That's all.

Mr. Law: No questions.

Trial Examiner Miller: You may be excused.

(Witness excused.)

Mr. Law: General Counsel rests.

Mr. Fuidge: You're not going to have the other two signatories? [115]

Mr. Law: No.

Mr. Fuidge: I might have called them myself. You take the stand, Sam.

SAM ZALL

a witness called by and on behalf of the respondent, having been previously sworn, was examined and further testified as follows:

Direct Examination

By Mr. Fuidge:

Q. Mr. Zall, some months prior to the signing of this contract marked Government's Exhibit—

Trial Examiner Miller: 6.

Q. (By Mr. Fuidge): —6, contract dated October 2, 1950, had there been some talk amongst the men about a wage increase?

(Testimony of Sam Zall.)

A. Yes, there had.

Q. And had that been reported to you by some one of them? A. By Cotton.

Q. Was the subject of the conversation a tie-in between your wage scale and that of General Mills?

A. That's right.

Q. Had there been such conversations going on over the period of, say, two months, just about up until this contract was signed October 2nd?

Mr. Law: I object to the question unless there is a proper foundation. Substantially we appear to be getting hearsay here unless the witness' conversation with people who were there [116] is set forth.

Mr. Fuidge: This is not an impeaching question and that's all you need a foundation for as I understand it. However, let me put it to you this way:

Q. (By Mr. Fuidge): From time to time in the two-month period prior to the signing of the contract, Government's Exhibit 6, had Cotton from time to time reported to you negotiations between him and the men? A. Yes.

Q. And what was your first knowledge that Mr. Gamble or Mr. Hanifin, on behalf of the complaining union, were in or about your premises?

A. The 26th of September.

Q. That's when they have testified that Mr. Gamble called on you?

A. That's when they called on me in my office.

Q. What transpired at that time?

A. Well, they came into the office and introduced

(Testimony of Sam Zall.)

themselves and brought up the subject of a possible contract between me and themselves as representing the men, and words to that effect, and I told them that it was a one-man business and that being a one-man small business that we had gotten along fine without any union representation, that we were getting along fine, and that I personally was not interested in having a union contract negotiated for. [117]

Q. The conversation was on a friendly tenor?

A. It was on a friendly tenor, yes.

Q. And at that time did one or the other of the gentlemen give you a contract, their form contract for your consideration?

A. Yes, it was a master contract, what they called a master contract, and they give it to me to look over.

Q. Who appeared to be taking the lead in the conversation? Mr. Gamble, or Mr. Hanifin?

A. Mr. Gamble.

Q. Did you say anything to them to the effect that so far as you were concerned there would be no union in your plant?

A. Well, I told them that as far as I was concerned, personally, that I didn't particularly need a union to negotiate with.

Q. Now, after that, they were back again, weren't they? A. Yes.

Q. And that was along about the third of October? A. The second or third.

(Testimony of Sam Zall.)

Q. And that conversation took place some place around the office of the plant, out on the sidewalk?

A. Yes.

Q. And you heard Mr. Gamble's testimony? Was that substantially correct?

A. Yes. [118]

Q. You tell us what was said in that conversation.

A. I don't recall word for word what was said. Mr. Gamble or Mr. Hanifin stated that they would like to negotiate, and I told them that I wasn't interested in negotiating, and then they said, I believe, that in that case we would have to have an election, and I said—which was all new to me; I didn't know what they particularly meant by that, and he explained to me that if they had authorization cards from 30% of the men, that they could file with the NLRB for an election, that if they won 51% of the votes, that they would then be the bargaining agent for the men. They were just getting ready to leave, almost in their car, when he explained that to me, and I said, "Well, go ahead and file for your election."

Q. Did you ask him—

A. I asked him when he told me—he then told me—I then asked him, "Well, do you have 30% of the votes, authorization votes in this establishment?" and he said, "Yes." And I said, "Well, may I see the cards, or will you tell me the names of those who authorized you to say that?" And he said, no, he wouldn't. I don't know the exact words he used, but he said no, he wouldn't. That

(Testimony of Sam Zall.)

was it. He wouldn't tell me or show me who they were.

Q. Well, on that day, when earlier in the conversation you said to him you didn't need a union or words to that effect, at that time you didn't even ask his verification that he had 30% [119] authorizations, did you?

A. I didn't have the slightest inkling that he was prepared to negotiate.

Q. Well, were you aware, or had you been informed by any of your men that either Mr. Gamble or Hanifin had been in there talking about them?

A. Yes, Cotton had told me once or twice that the union men were active at the plant and I told Cotton that if he saw them again not to give them permission to talk to the men on my time, and I guess he never saw them again to tell them that.

Q. In any event, on October 3rd, or whatever day it may have been, when you made the statement that you didn't need a union, you had no knowledge that they had signed anybody up?

A. Not the slightest.

Q. Now, when was it that Cotton came to you with this rough list that we've heard about, having to do with the proposed pay schedule of the men?

A. It was a couple of days later after the time that Mr. Gamble and Mr. Hanifin—

Q. Had you sent Cotton out to interview the men?

(Testimony of Sam Zall.)

A. No, I didn't send him out; he came to me.

Q. He came to you? A. Yes.

Q. At that time did he have that list in his hand?

A. Yes, he had a rough draft and he said he had been talking [120] to the men that, inasmuch as we had been talking about increased wages and other conditions of employment, that he had written it all down and that he had been talking to the men and that that was it, and he showed it to me.

Q. Well, was that the same day—Let me put it to you this way: With that list in your hand did you then go out and talk to the men?

A. Well, obviously I did. I have thought in my own mind that the way that occurred was that they were having a meeting back there and that I had walked through the mill and they were having this meeting and someone called me over and said, "Here's this draft we are going over, and do you want to be in on the meeting?" or started asking me questions about it and I went over and I read each part off.

Q. Well, with the testimony of Matthews and Curt and the other lad, Adams, that you heard here today, is your memory refreshed to the contrary?

A. Well, I think, as near as I can remember, I'd say it was roughly that way.

Q. Well, was it the same day that Cotton brought you the rough sheet, did you go out there and go over it with the men and then bring it in and let Mrs. Miles type it and send it out, is that right?

(Testimony of Sam Zall.)

A. That's right. We went over this rough draft.

Q. You and Cotton? [121]

A. Yes, I believe he was there, as I remember it. All these men were there and I was going over each part there, asking questions, so I said, "Let's go over the whole thing." So we went over the whole thing and then when we got through, I think that I turned it over to Cotton and walked up toward the front and turned it over to him and he took it into Mrs. Miles and she typed it up and I signed it, and I had to leave, I had to go out in the country, and I signed it, say, after lunch. This was all in the morning. And then that evening, or sometime during the day, Cotton had returned it to the men and they signed it.

Q. Now, after you had had your conversation with Mr. Gamble and Mr. Hanifin on the street that day, the last time you saw them, I guess, it was?

A. Yes.

Q. Did you then go through the mill and ask the boys if they had signed the cards?

A. Yes, I did.

Q. How far did you inquire as to what they signed?

A. Well, not very deeply. I just merely asked them if they had—if it was true, that I had just talked to Mr. Gamble and he said he had over 30% of the votes, or authorization cards, rather, and I merely asked each man if he had signed an authorization card.

(Testimony of Sam Zall.)

Q. You got your answer and that was it? [122]
A. That was it.

Q. Well, now, since that time and up 'til today, have you talked to any of them concerning this matter at all? A. No, I haven't.

Q. You have stayed strictly away from it on my advice, haven't you?

A. Yes. I think you could say that about yourself, too, Mr. Gamble, couldn't you?

Mr. Gamble: I stayed away, period.

Q. (By Mr. Fudge): Mr. Zall, I am not sure whether the record shows in our stipulations this morning, but insofar as the \$90,000 worth of goods that you admit to buying out—that comes to you from out of state, you purchase that from brokers in the state and are billed by the brokers and make the payments to the brokers, is that correct?

A. Yes.

Q. How long have you been in the feed business, Mr. Zall?

A. Well, I have been in the seed business roughly twenty years.

Q. And in Marysville some fifteen?

A. About eleven years.

Q. And you've got an educational background of a degree at Davis, have you not? A. Yes.

Q. What is that degree?

A. It's an M.S. [123]

Q. And amongst other things, did you have extensive courses in poultry husbandry?

(Testimony of Sam Zall.)

A. Yes, I did.

Q. Roughly, how much of your time was devoted to that? To those subjects in the obtaining of your M.S.?

A. Well, I'd say, roughly, 50 per cent of the time.

Q. When did you leave the University?

A. I graduated in 1934.

Q. And subsequent to that time, you have been in the business, feed business, since that time, approximately?

A. Since that time, and to a lesser degree before that time.

Q. And have you in your feed business have opportunity and contacts with poultry producers throughout this area, including the Vantress Mill that you deal with now? A. Yes.

Q. With your educational background and with your practical background, will you tell me this: what effect, if any, does the feeding of this feed by Vantress Bros. to their stock have to do with the production of eggs?

A. State that again.

Q. Your feed is fed to Vantress breeding stock, is it not? A. Yes.

Q. What effect does the feeding of your feed to the stock have on the egg production of the hens?

A. Well, it merely increases the layability or production [124] of the hen.

Q. If you were to turn that breeding stock loose on the range out here in the foothills, letting

(Testimony of Sam Zall.)

them scratch for natural feed and grain and bugs and insects and one thing and another, would they still lay eggs? A. Yes, they would.

Q. And would they still be Vantress chicken eggs? A. If they owned the chickens, yes.

Q. So, the only effect, then, you say, on the proclivity of the bred hen is on her layability?

A. That's right. [125]

* * *

Mr. Law: Yes. Well, I believe that full weight should be given to the Authorization Cards in the absence of a showing that they were obtained through clear fraud or duress, and that the Board and the Examiner as is the general practice in this case, should not go behind the signed written instruments. It must assume, that in the absence of a clear showing or fraud or duress, that these statements mean what it says, and that the employee knew what he was doing. Otherwise, I think probably the practice of finding the majority representation upon authorization or membership cards should be suspended entirely. It is perhaps meaningless if not improper to ask employees several months after they have signed a card and after there have been unfair labor practices in the case what their original intention was or objective was. By all objective tests, I think they knew what they were signing, and intending the obvious and usual result of their signing, and, therefore, these cards should be considered as adequate proof of majority

representation, as of October 2, and at all times thereafter.

Trial Examiner Miller: Mr. Fuidge?

Mr. Fuidge: I would say this. We not only have fraud, duress, and undue influence, but of course we don't mean to suggest anything like that. But we also have the element of mistake. In the construction of any written instrument, and [137] the contractual intent with which the agreement was signed. And that is what those cards are in substance and effect contracts.

Now, the weight with which those cards are to be received I respectfully submit, is subject to a good deal of consideration. Particularly in these cases, because as one of the boys has testified he thought that all he was doing was signing a form as to whether or not we would have an election, and if we had an election, who would get elected. And then, he finds out that he had put an application in for membership in the Union. There might be a very serious question as to the authority of the Complainant to bring the charge at all. And so, unless there is some thought to the contrary, and there very possibly may be, I do not think that there is any sanctity to be attached to the mere fact that these cards are printed and signed by the parties. But that the contractual intent is also a question of fact, and therefore, the intent having been determined, the weight to be attached to the cards should be fixed by the Examiner.

* * *

Received February 7, 1951. [138]

In the United States Court of Appeals
for the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD,
Petitioner,
vs.

SAM ZALL, an Individual d/b/a SAM ZALL
MILLING CO.,
Respondent.

CERTIFICATE OF THE NATIONAL LABOR
RELATIONS BOARD

The National Labor Relations Board, by its Executive Secretary duly authorized by Section 102.87, Rules and Regulations of the National Labor Relations Board—Series 6, hereby certifies that the documents annexed hereto constitute a full and accurate transcript of the entire record of a proceeding had before said Board, entitled, "In the Matter of Sam Zall, an individual, doing business as Sam Zall Milling Co., and American Federation of Grain Millers International Union, A.F.L.," the same being known as Case No. 20-CA-503, before said Board, such transcript including the pleadings and testimony and evidence upon which the order of the Board in said proceeding was entered, and including also the findings and order of the Board.

Fully enumerated, said documents attached hereto are as follows:

(1) Order designating Maurice M. Miller Trial Examiner for the National Labor Relations Board, dated January 29, 1951.

(2) Stenographic transcript of testimony taken before Trial Examiner Miller on January 30, 1951, together with all exhibits introduced in evidence.

(3) Copy of Trial Examiner Miller's Intermediate Report and Recommended Order, dated March 6, 1951, (annexed to item 5 hereof); order transferring case to the Board, dated March 6, 1951, together with affidavit of service and United States Post Office return receipts thereof.

(4) Respondent's exceptions to the Intermediate Report, received March 26, 1951.

(5) Copy of Decision and Order issued by the National Labor Relations Board on June 29, 1951, with Intermediate Report annexed, together with affidavit of service and United States Post Office return receipts thereof.

In Testimony Whereof, the Executive Secretary of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set his hand and affixed the seal of the National Labor Relations Board in the city of Washington, District of Columbia, this 22nd day of October, 1951.

/s/ FRANK M. KLEILER.

[Seal]

NATIONAL LABOR
RELATIONS BOARD.

[Endorsed]: No. 13031. United States Court of Appeals for the Ninth Circuit. Sam Zall, an Individual Doing Business as Sam Zall Milling Company, Petitioner, vs. National Labor Relations Board, Respondent and National Labor Relations Board, Petitioner, vs. Sam Zall, an Individual Doing Business as Sam Zall Milling Co., Respondent. Transcript of Record. Upon Petition to Review and Petition for Enforcement of Order of the National Labor Relations Board.

Filed October 29, 1951.

PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

[Title of Court of Appeals and Cause.]

PETITION OF SAM ZALL, AN INDIVIDUAL
DOING BUSINESS AS SAM ZALL MILL-
ING COMPANY, THAT THE DECISION
AND ORDER IN CASE NO. 20-CA-503 OF
THE NATIONAL LABOR RELATIONS
BOARD BE SET ASIDE AND ENFORCE-
MENT THEREOF STAYED PENDING
THE DETERMINATION OF THE
HEREIN PETITION

To the Honorable, the Court of Appeals of the
United States of America, for the Ninth
Judicial Circuit:

The petition of Sam Zall respectfully shows:

That he is an individual doing business as the
Sam Zall Milling Company, in the City of Marys-
ville, State of California; that he is engaged in
the manufacture, amongst other products, of
chicken feed.

That the National Labor Relations Board of the
United States of America in proceeding No. 20-CA-
503 has made its decision and order, dated June 29,
1951, affirming the Intermediate Report and Recom-
mended Order of the Trial Examiner.

That the effect of said Decision and Order is to
hold (1) that the operations of Petitioner are
within the provisions of the National Labor Rela-
tions Act; (2) that the American Federation of
Grain Millers International Union A. F. L. is the
bargaining agent for the employees of Petitioner

and (3) that Petitioner has engaged in unfair practices in refusing to bargain with said union and has entered into a private employment agreement with his employees.

This Honorable Court is petitioned to set aside said decision and order on the following grounds:

1. That the record shows Petitioner is not engaged in interstate commerce nor in business activities which would have a pronounced effect on commerce.
2. That Petitioner was never faced with a clear cut demand for recognition or definite information that the union was authorized by a majority of the employees to bargain on their behalf.

Petitioner respectfully prays that enforcement of said decision and order be stayed pending the determination of the herein petition.

Respectfully submitted,

RICH, CARLIN & FUIDGE,
By /s/ RICHARD H. FUIDGE,
Attorneys for Petitioner.

Points and Authorities

I.

Petitioner Is Not Engaged in Interstate Commerce, nor in Business Activities Which Would Have a Pronounced Effect on Commerce

Petitioner manufactures, among other things, chicken feed. None of this chicken feed is shipped

outside the State of California. Petitioner's single largest buyer of this chicken feed is the Van Tress Hatchery and Breeding Farms of Marysville, which itself is not subject to the jurisdiction of the National Labor Relations Act.

"The record establishes by stipulation, that I. K. Vantress, a member of the Vantress enterprise, would testify, if called, that feed purchased from the respondent is fed only to its breeding stock, not to baby chicks; that the breeding stock is not shipped out of the state; and that its out of state shipments consist principally of hatching eggs. Shipments of chickens are rare and represent a 'very minor percentage' of total shipments" (Intermediate Report and Recommended Order, page 3, 9-21).

Mr. Zall testified that he had been in the feed business for about twenty years; that he obtained an MS degree at the University of California at Davis where he engaged in extensive courses in poultry husbandry. He testified that the effect of the feeding of the chicken feed to the stock of the Vantress Hatchery merely increases the layability or production of the hen, which if turned loose on the range scratching for natural feed and insects would still lay eggs.

We therefore have a situation where under principles of genetics the actual process of the laying of the egg is not affected—the layability of the hen

is merely increased. The chicken feed never directly or indirectly reaches the eggs which are the products shipped in interstate commerce and serves only to increase the inherent laying power of the hen.

We submit on this basis the instant case is not governed by *McComb vs. Super A. Fertilizer Works, Inc.*, 165 Fed. (2d) 824, *Roland Electrical Company v. Walling*, 326 U. S. 657 or *Hollow Tree Lumber Company*, 91 NLRB 113.

We believe it is a case of first impression.

It is respectfully submitted under the peculiar circumstances of the case, that the operations of the Petitioner, he not being actually or physically engaged in interstate commerce, are not such as would have a pronounced, or any, effect on commerce.

II.

Petitioner Was Never Faced With a Clear and Unequivocal Demand for Recognition and Bargaining

Petitioner is a small operator. At most he does not employ over eight or nine employees. He had no legal advice during the inception of the matter until it progressed to the point where a complaint issued.

There never was any suggestion by the organizers that he was engaged in interstate commerce within the meaning of the Labor Management Relations Act. The question never arose. The very nature of his operations and the fact that they were

limited to sales inside the State of California would indicate the contrary to him as a layman.

If in fact by reason of these operations and the "dollar formula" adopted by the Board, he was under such jurisdiction (which hypothesis we earnestly deny) he certainly did not know it, either in fact or in law and such violations of Section 8 (a) (1) of the Act as the Board has found occurred, were certainly innocently done.

The serious question here involved is whether petitioner was ever faced with a specific request to recognize and bargain with the Union. A clear and unequivocal demand for recognition is of course the true basis for a claim of violation. (The Solomon Company, 84 NLRB 226; NLRB v. Valley Broadcasting Company, 28 LRRM 2148).

We submit there was no such demand here.

The Intermediate Report states as follows:

"On or about September 26, 1950, having secured an authorization card from Stovall (an employee), Gamble and Hanifin called upon the Respondent at the plant. (Inserts ours.) Zall was advised that the Union planned to organize his employees. The testimony with respect to the conversation that ensued is not in conflict on material matters. Gamble's detailed version of it, which I credit, reads as follows:

" 'He said that his plant was like a big family and that whenever he had any trouble in the plant why he went out and adjusted them and he said that he was a man of few words and he laid his cards on the table and says, "I don't want a union here and my people do

not need a union." And I stated to him that I could appreciate his position, now not knowing too much about the principles and policies of the organization, but after we had got better acquainted, why he would be more satisfied. And he says, "I have stated my position, we do not need a Union in this plant."'" (P. 7, 15-34.)

Mr. Zall testified:

"My first knowledge that Mr. Gamble or Mr. Hanifin were in my premises was on September 26, 1950. They came into the office and introduced themselves and brought up the subject of a possible contract between me and themselves as representing the men, and words to that effect, and I told them it was a one man business and that being a one man small business that we had gotten along fine without any union representation, that we were getting along fine and that I personally was not interested in having a union contract negotiated for (R. T. p. 117).

"They gave me what they called a master contract to look over. I told them that as far as I was concerned personally, that I didn't particularly need a union to negotiate with (R. T. p. 118).

"On the second or third of October, they were back again. I had a conversation out on the sidewalk with them. Mr. Gamble and Mr. Hanifin stated that they would like to negotiate, and I told them I wasn't interested in negotiating, and then they said, I believe, that in that case we would have to have an election, and I said—which was all new to me,

I didn't know what they particularly meant by that, and he explained to me that if they had authorization cards from thirty per cent of the men, that they could file with the NLRB for an election, that if they won 50% of the votes that they would then be the bargaining agent for the men. They were just getting ready to leave, almost in their car when he explained that to me, and I said, 'Well go ahead and file for your election.'

"I asked him when he told me—he then told me—I then asked him 'Well, do you have 30% of the votes, authorization votes in this establishment?' And he said, 'Yes.' And I said, 'Well, may I see the cards, or will you tell me the names of those who authorized you to say that?' And he said, 'No,' he wouldn't. I don't know the exact words he used but he said no, he wouldn't. That was it. He wouldn't tell me or show me who they were.

"Q. Well, on that day, when earlier in the conversation you didn't need a union or words to that effect, at that time you didn't even ask his verification that he had 30% authorization?

"A. I didn't have the slightest inkling that he was prepared to negotiate." (R. T. p. 119-120.)

In the Intermediate Report it is stated:

"On October 3, 1950, after having secured designation cards from a majority of the Respondent's employees, Gamble and Hanifin returned to the plant; they met the Respondent outside the plant office and held a conversation with him on the sidewalk before the front entrance. Gamble's testi-

mony, which I credit, with respect to this conversation reads as follows:

“ ‘I asked Mr. Zall if he had read and studied the contract, he said, “Yes,” he had; I asked him what he thought of it and he said he thought it was a very good contract but that was one man’s opinion. I asked him if he would consent to a joint election which was customary between unions and employers for the purpose of recognition of the union as his employees’ representative. He stated that he had already previously stated his position that he did not want a Union in the plant. I asked him if he would consent to an election if we had over thirty per cent . . . thirty per cent of the membership signed up. Signed up means the authorization cards. He says, “Have you got them?” I said, “Yes.” He said, “Let me see them.” I said, “Oh, no.” I said, “That is for the Board and if the Board decides to let you see the authorization cards, that will be another matter.” He stated again that he had previously made himself known on this matter and at that time we should leave and he went into the plant and we left the premises.’

“Gamble also testified, credibly, that Zall, in the course of the conversation, had invited him to go ahead and petition for an election, but stated that his good relations with the Union would cease when it had its election. The Union, in fact, did file a petition for an

election on October 4, 1950; the petition was withdrawn, however, on the 16th of the month."

(Intermediate Report page 7, 43 to page 8, 14.)
(Underscore ours.)

On September 26, 1950, when Gamble and Hani-fin walked into the Petitioner's plant they were utter strangers to him. He had never seen them before. There was no claim made at that time that the Union represented the employees. As a matter of fact, as the Trial Examiner puts in, "Zall was advised that the Union planned to organize his employees." He might have been "effectively put upon notice with respect to the Union's desire to negotiate as the representative of his employees" but not even the Union contends that on that day it had any authority except from one employee. The only fair intendment from the conversation quoted is that the Union was intending to organize the plant if it could and if it could it would probably propose a contract somewhat similar to the "Master Agreement."

On October 3, 1950, the two organizers returned and other than a passing reference to the contract the substance of the conversation went to the question of an election and the alleged fact that they had the required 30% for that purpose. They asked the Petitioner if he would consent to the election (though why that would be necessary, if they had the necessary consents, is hard to see) and when he asked them to see the consents he was refused and brushed off with the statement, "That is for

the Board and if the Board decides to let you see the Authorization Cards that will be another matter." There was not a single indication any place in the conversation that the Union had the required majority or that based on any claim of such majority they were demanding, requesting or requiring that the petitioner should bargain with them.

There is nothing in the record as we view it, which can justify any conclusion that the Petitioner intended to refuse to negotiate if negotiations were ever presented to him. He was certainly entitled to state his personal opinion that he didn't want a Union in his plant and that his people did not need a Union. That is all he ever said. He did not say, directly or indirectly, by implication or otherwise, that he would never negotiate with an organization representing the requisite percentage of his employees.

The Union did in fact file a petition for an election on October 4, 1950, but for some reason best known to itself this was withdrawn on October 16.

While the Trial Examiner found that there was a sufficient demand in which he is sustained by the Board, nonetheless he did have a doubt in his mind as to compliance with the requirement. In his Intermediate Report he says:

"Ordinarily, it is true, an employer is not required to recognize and bargain with a Union until he receives a request for such recognition or the initiation of negotiations from the labor organization. (NLRB v. Columbian Enameling and Stamping Company, 306 U. S. 292.) And the record, in its

present form, does give rise to some doubt with respect to the Union's compliance with this requirement. It did not, in conformity with its usual practice, dispatch a letter to the employer advising him of its status as a majority representative and requesting a conference for the purpose of initiating negotiations." (Intermediate Report pages 9, 16-24.)

We realize that the motives under which an employee signs an authorization card may be of no interest in determining the question of representation. However, in this particular case the testimony of the employees is such that it certainly supports the conclusion that when the organizers called on the petitioner they had nothing in mind but an election.

There were seven employees within the unit. Five signed so-called "Authorization and Application for Membership Cards." The testimony of the organizer was that two additional employees also signed the cards but he did not see fit to bring the cards in before the Trial Examiner. The two employees were not called as witnesses.

The General Counsel called only three of the five. Two of the three testified that they understood that their signatures were for the limited purpose of permitting the Union to file a petition and bring about an election.

The matter is best summed up in the words of the Honorable A. Murdock, who in dissenting in part said:

"It is axiomatic that a refusal, particularly an employer's refusal to recognize and bargain with a

Union, must be preceded by a specific request. The Board has heretofore characterized such a request as 'a clear and unequivocal demand for recognition.' " (Citing the Solomon Company, 84 NLRB 26 and NLRB v. Valley Broadcasting Company 28 LRRM 2148.)

"An examination of the facts in the instant case reveals, as the majority concedes, no evidence that the Union at any time specifically requested the respondent to recognize it as the majority bargaining representative of his employees. Moreover there is no evidence that the Union representatives, who met twice with the respondent, informed him that they were authorized by a majority of his employees to bargain on their behalf. Rather, it is apparent from the very testimony of the Union agent, Gamble, that on October 3, 1950, the Union claimed only 'over 30% of the membership signed up.' The majority, however, are satisfied with Gamble's conversation with respondent on October 3, 1950, together with the language of the general recognition clause contained in the 'Master Agreement' which the Union had left with the representative to 'study,' constitute a sufficient request and claim to majority representative status. But the evidence, according to the credited testimony of the Union's representative, reveals merely that the Respondent was put on notice that the Union was organizing his plant and was requesting him to agree to a consent election. It was in this context that Gamble, the Union agent, left the blank contracts with Respondent, expressing sympathy for the Respond-

ent's anti-union position and requesting that the Respondent did not know 'too much about the principles and policies of the organization.' "

In footnote 12 Mr. Murdock says:

"Although I agree with the Trial Examiner's findings that the Union made no claim to majority status, I cannot agree with its further finding that to do so would have been 'futile.' The record will not support a conclusion that the Respondent had demonstrated an inflexible determination to have no dealings with the Union. Indeed, he accepted the contract, read it, and subsequently told Gamble he thought it was 'a good contract.' Under these circumstances, it was incumbent upon the Union to speak up and state its claim to a majority and make a request to negotiate a contract so providing, if it was actually requesting anything more than a consent election agreement."

Mr. Murdock proceeds further in his Opinion:

"The majority stress the Respondent's testimony that he interpreted the remarks of Gamble as an attempt to negotiate. But words in the mouths of inexpert witnesses are not words of art. It is clear that Gamble wanted to negotiate a consent election agreement. It is not clear, and I do not think the Board should so hold, that the Union was also requesting immediate recognition as the bargaining representative of the Respondent's employees."

Then in footnote 13 Mr. Murdock says:

"I cannot agree with the majority that the Respondent's use of the word 'negotiate' in his testimony means 'collective bargaining.' Gamble's tes-

timony, which the Respondent agreed was accurate, and which the Trial Examiner credits, reveals that Gamble said: 'I asked him (Zall) if he would consent to an election if we had over thirty per cent.' The Respondent asked to see the authorization cards and Gamble refused. It was then, according to Gamble's credited testimony, that the Respondent said: 'Go ahead and have your election.' I interpret the testimony of the Respondent, cited in footnote 7 of the majority's opinion, to be in accord with Gamble's version of the conversation between them."

Mr. Murdock completes his Opinion and says:

"While I fully agree with the majority that the Respondent's conduct following his conversation with Gamble on October 3, 1950, was in violation of the rights of his employees under the Act, I do not believe that such conduct may properly be substituted for the requirement that a union must clearly and affirmatively make known to an employer that it is the majority bargaining representative of his employees and desires immediate recognition for the purposes of collective bargaining. In my opinion, this requirement is a condition precedent to a finding that an employer had refused to bargain with a labor organization.

"Accordingly, I would dismiss the allegation in the complaint that the Respondent has refused to bargain within the meaning of Section 8 (a) (5) of the Act."

We respectfully submit that the decision and order complained of should be set aside on the grounds:

1. That Petitioner is not within the jurisdiction of the Act and
2. That if within the jurisdiction of the Act he has not been faced with the clear and unequivocal demand required.

Respectfully submitted,

RICH, CARLIN & FUIDGE,

By /s/ RICHARD H. FUIDGE,

Attorneys for Petitioner.

State of California,
County of Yuba—ss.

Richard H. Fudge, being first duly sworn, deposes and says: That he is one of the attorneys of record for the petitioner Sam Zall, in the above-entitled action; that he has read the within and foregoing petition and Points and Authorities in support thereof and knows the contents thereof; that the same is true of his own knowledge except as to the matters which are stated therein on his information or belief, and as to those matters he believes it to be true; that he maintains his law office in the City of Marysville, County of Yuba, State of California, and that said petitioner, Sam Zall, at the date hereof, is without said County and, therefore, affiant makes this verification on behalf of said petitioner.

/s/ RICHARD H. FUIDGE.

Subscribed and sworn to before me this 25th day of July, 1951.

[Seal] /s/ EDITH FRANCISCOVICH,
Notary Public in and for the County of Yuba, State
of California.

Affidavit of Service by Mail attached.

[Endorsed]: Filed July 27, 1951.

(Title of Court of Appeals and Cause.]

PETITION FOR ENFORCEMENT OF AN
ORDER OF THE NATIONAL LABOR RE-
LATIONS BOARD

To the Honorable, the Judges of the United States
Court of Appeals for the Ninth Circuit:

The National Labor Relations Board, pursuant to the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C. Supp. IV, Secs. 151, et seq.), hereinafter called the Act, respectfully petitions this Court for the enforcement of its order against Respondent, Sam Zall, an individual d/b/a, Sam Zall Milling Co., Marysville, California, his agents, successors and assigns. The proceeding resulting in said order is known upon the records of the Board as "In the Matter of Sam Zall, an individual doing business as Sam Zall Milling Co. and American Federation of Grain Millers International Union, AFL," the same being known as Case No. 20-CA-503.

In support of this petition the Board respectfully shows:

(1) Respondent is an individual engaged in business in the State of California, within this judicial circuit where the unfair labor practices occurred. This Court therefore has jurisdiction of this petition by virtue of Section 10 (e) of the National Labor Relations Act, as amended.

(2) Upon all proceedings had in said matter before the Board, as more fully shown by the entire record thereof certified by the Board and filed with this Court herein, to which reference is hereby made, the Board on June 29, 1951, duly stated its findings of fact and conclusions of law, and issued an order directed to the Respondent, his agents, successors and assigns. The aforesaid order provides as follows:

Order

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that Sam Zall, an individual d/b/a Sam Zall Milling Co., Marysville, California, his agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with the American Federation of Grain Millers International Union, affiliated with the American Federation of Labor, as the exclusive representative of all his production and maintenance employees, includ-

ing the truck driver, but exclusive of supervisors as defined in the Act, salesmen, and office employees.

(b) Giving effect to the agreement made with his employees on October 5 or 6, 1950, or any modification, continuation, extension, or renewal thereof, to forestall collective bargaining or deter self-organization; provided, however, that nothing herein shall be construed to require the Respondent to vary any substantive provisions of such agreement, or to prejudice the assertion by the employees of any rights they may have thereunder.

(c) In any other manner interfering with, restraining, or coercing his employees in the exercise of their right to self-organization, to form labor organizations, to join or assist the American Federation of Grain Millers International Union, A. F. L., or any other labor organization, to bargain collectively through representatives of their own free choice, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any and all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the National Labor Relations Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with American Federation of Grain Millers Interna-

tional Union, A. F. L., as the exclusive representative of his employees in the aforesaid bargaining unit, with respect to their rates of pay, wages, hours of work, and other terms or conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement.

(b) Give a separate written notice to each of the employees who executed the agreement of October 5 or 6, 1950, or any modification, continuation, extension, or renewal thereof: (1) That he will not enforce or attempt to enforce the agreement in question to forestall collective bargaining or deter self-organization; (2) that employees will not be required or expected, by virtue of that agreement, to deal with the Respondent directly in respect to their rates of pay, wages, hours of work, or other terms and conditions of employment; (3) that such discontinuance of the contract is without prejudice to the assertion of any legal rights employees may have required under it, or to the assertion of any defenses thereto acquired by the Employer.

(c) Post at his establishment in Marysville, California, copies of the notice attached hereto and marked "Appendix A."¹⁰ Copies of the notice to be furnished by the Regional Director for the Twentieth Region, as the agent of the Board, should be

¹⁰In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be inserted before the words "A Decision and Order," the words "A Decree of the United States Court of Appeals Enforcing."

posted by the Respondent immediately upon their receipt, after being duly signed by him or a person qualified to act as his representative, and should be maintained by him for sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps should be taken by the Respondent to insure that these notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for the Twentieth Region in writing within ten (10) days from the date of this Order what steps Respondent has taken to comply herewith.

(3) On June 29, 1951, the Board's Decision and Order was served upon Respondent by sending a copy thereof postpaid, bearing Government frank, by registered mail, to Respondent's Counsel.

(4) Pursuant to Section 10 (e) of the National Labor Relations Act, as amended, the Board is certifying and filing with this Court a transcript of the entire record in the proceeding before the Board, including the pleadings, testimony and evidence, findings of fact, conclusions of law, and order of the Board.

Wherefore, the Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon Respondent and that this Court take jurisdiction of the proceeding and of the questions determined therein and make and enter upon the pleadings, testimony and evidence, and the proceedings set forth in the

transcript and upon the order made thereupon as set forth in paragraph (2) hereof, a decree enforcing in whole said order of the Board, and requiring Respondent, his agents, successors and assigns to comply therewith.

NATIONAL LABOR
RELATIONS BOARD,

By /s/ A. NORMAN SOMERS,
Assistant General Counsel.

Dated at Washington, D. C. this 22nd day of October, 1951.

Appendix A

Notice To All Employees Pursuant to
a Decision and Order

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, I hereby notify my employees that:

I Will Not in any manner interfere with, restrain, or coerce my employees in the exercise of their right to self-organization, to form labor organizations, to join American Federation of Grain Millers International Union, A. F. L., or any other labor organization, to bargain collectively through representatives of their own free choice, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities, except to the extent that such right may be affected by an agreement which requires member-

ship in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

I Will bargain collectively upon request with the above-named union as the exclusive representative of all the employees in the bargaining unit described below with respect to rates of pay, wages, hours of work, and other terms and conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All of my production and maintenance employees, including the truck driver, but exclusive of supervisors as defined in the Act, salesmen, and office employees.

I Will Not give effect to the agreement executed by the employees on or after October 5, 1950, or any modification, continuation, extension, or renewal of it to forestall collective bargaining or deter self-organization.

All of my employees are free to become, remain, or refrain from becoming members of the above-named union, or any other labor organization, except to the extent that their right to refrain may be affected by a lawful agreement which requires membership in a labor organization as a condition of employment.

SAM ZALL MILLING CO.,
(Employer)

By
(Representative) (Title)

Dated

This notice must remain posted for 60 days after its date, and must not be altered, defaced, or covered by any other material.

[Endorsed]: Filed October 29, 1951.

[Title of Court of Appeals and Cause.]

STATEMENT OF POINTS ON WHICH PETITIONER INTENDS TO RELY

In this proceeding, petitioner, National Labor Relations Board, will urge and rely upon the following points:

1. Respondent is engaged in commerce within the meaning of the Act.
2. The Board properly found that respondent violated Section 8 (a) (1) of the Act by interrogating its employees concerning their union affiliation and by negotiating individual employment contracts with them for the purpose of forestalling collective bargaining.
3. The Board properly found that respondent violated Section 8 (a) (5) of the Act by refusing to bargain with the union and by bargaining directly with the individual employees.

/s/ A. NORMAN SOMERS,
Assistant General Counsel, National Labor Relations Board.

Washington, D. C., Oct. 22, 1951.

[Endorsed]: Filed October 29, 1951.

[Title of Court of Appeals and Cause.]

STATEMENT OF POINTS ON WHICH PETITIONER SAM ZALL INTENDS TO RELY

In this proceeding petitioner, Sam Zall will rely upon the following points:

1. That he is not engaged in commerce within the meaning of the National Labor Relations Act.
2. The claimed violations of Section 8 (a) (1) and of Section 8 (a) (5) of the Act are not supported by the record.

Respectfully submitted,

RICH, CARLIN & FUIDGE,

By /s/ RICHARD H. FUIDGE,

Attorneys for Petitioner,
Sam Zall.

November 6, 1951, Marysville, California.

[Endorsed]: Filed November 7, 1951.

[Title of Court of Appeals and Cause.]

ORDER TO SHOW CAUSE

United States of America—ss.

The President of the United States of America:
To: Sam Zall Milling Company, 9th & B Streets,
Marysville, California and American Feder-
ation of Grain Millers International Union,
AFL, Attn: Mr. Cecil F. Gamble, 610 Santa
Clara Street, Vallejo, California

Greeting:

Pursuant to the provisions of Subdivision (e) of Section 160, U.S.C.A. Title 29 (National Labor Relations Board Act, Section 10 (e)), you and each of you are hereby notified that on the 29th day of October, 1951, a petition of the National Labor Relations Board for enforcement of its order entered on June 29, 1951, in a proceeding known upon the records of the said Board as

“In the Matter of Sam Zall, an individual doing business as Sam Zall Milling Co., and American Federation of Grain Millers International Union, AFL, Case No. 20-CA-503,”

and for entry of a decree by the United States Court of Appeals for the Ninth Circuit, was filed in the said United States Court of Appeals for the Ninth Circuit, copy of which said petition was attached hereto.

You are also notified to appear and move upon,

answer or plead to said petition within ten days from date of the service hereof, or in default of such action the said Court of Appeals for the Ninth Circuit will enter such decree as it deems just and proper in the premises.

Witness, the Honorable Fred M. Vinson, Chief Justice of the United States, this 29th day of October in the year of our Lord one thousand, nine hundred and fifty-one.

[Seal] /s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the
Ninth Circuit.

Returns on Service of Writ attached.

Received October 30, 1951.

[Endorsed]: Filed November 7, 1951.

[Title of Court of Appeals and Cause.]

ORDER TO SHOW CAUSE

United States of America—ss.

The President of the United States of America

To: American Federation of Grain Millers International Union, AFL, 918 Metropolitan Building, Minneapolis, Minnesota

Greeting:

Pursuant to the provisions of Subdivision (e) of Section 160, U.S.C.A. Title 29 (National Labor

Relations Board Act, Section 10 (e)), you and each of you are hereby notified that on the 29th day of October, 1951, a petition of the National Labor Relations Board for enforcement of its order entered on June 29, 1951, in a proceeding known upon the records of the said Board as

“In the Matter of Sam Zall, an individual doing business as Sam Zall Milling Co., and American Federation of Grain Millers International Union, AFL, Case No. 20-CA-503,”

and for entry of a decree by the United States Court of Appeals for the Ninth Circuit, was filed in the said United States Court of Appeals for the Ninth Circuit, copy of which said petition is attached hereto.

You are also notified to appear and move upon, answer or plead to said petition within ten days from date of the service hereof, or in default of such action the said Court of Appeals for the Ninth Circuit will enter such decree as it deems just and proper in the premises.

Witness, the Honorable Fred M. Vinson, Chief Justice of the United States, this 29th day of October in the year of our Lord one thousand, nine hundred and fifty-one.

[Seal] /s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the
Ninth Circuit.

Return on Service of Writ attached.

[Endorsed]: Filed November 13, 1951.